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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1990

Addendum

ITALY */

[23 October 1992]

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*/ For the initial report submitted by the Government of Italy, see document CCPR/C/6/Add.4; for its consideration by the Committee, see summary records CCPR/C/SR.257, SR.258 and SR.261 and Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40, paras. 104-147). For the second periodic report submitted by the Government of Italy, see document CCPR/C/37/Add.9; for its consideration by the Committee, see summary records CCPR/C/SR.908 to SR.912 and Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40, paras. 541-609).

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Introduction

(a) This report, the third in the series of reports submitted by the Government of Italy to illustrate the implementation in that country of the standards contained in the International Covenant on Civil and Political Rights, covers the period 1987-1991, with an attempt to update to some extent until 30 June 1992.

(b) Like its predecessors, this report has been prepared by the Interministerial Committee on Human Rights, which is institutionally responsible for coordinating the contributions of each of the ministries for the purposes of drafting the reports required by the various United Nations human rights conventions.

(c) As regards the International Covenant on Civil and Political Rights, the most important feature is the entry into force in 1989 of the Code of Criminal Procedure which, in respect of its basic principles, is a major innovation on the earlier legislation on the subject. It has thus been deemed appropriate to illustrate at some length the various major aspects of the new Code.

In accordance with a previous suggestion by the Human Rights Committee, an attempt has been made to provide useful information on each of the articles of the Convention. There are no comments on some articles, either because the Italian positions in question are already well-known and consolidated or because the relevant explanations are contained in this introduction.

(d) As regards article 1, Italy has always upheld, in the relevant international organs, the right of peoples to self-determination by strongly supporting its recognition in every case where that principle, contained in various international instruments but already affirmed in the Charter of the United Nations, can be applied.

(e) There are no comments in this report on articles 4 and 5 inasmuch as there has never been an occasion to invoke or apply the former in Italy while, in the case of the latter, none of the situations envisaged has ever occurred.

(f) Article 11 of the Convention has never required any comment because, since 1877, the Italian legal system has repudiated the principle of imprisonment merely on the ground of inability to fulfil a contractual obligation.

As already pointed out in the first report, the principles contained in article 15 were adopted as fundamental principles of the Constitution of the Republic but had, in fact, already been enshrined in the previous constitution.

(g) Likewise, article 16 does not appear to merit any comment inasmuch as the Italian legal system has never known any restrictions on or limitations of the right of everyone to recognition everywhere as a person before the law.

(h) Lastly, there is no commentary on article 25 in this report in view of the fact that there have been no new developments with respect to the principles contained in the Constitution and their implementing legislation concerning the full right to take part in the conduct of public affairs, the right to vote and to be elected and access to public service.

Article 2

(Guarantee of human rights and remedies)

Institution of legal aid, at State cost, for the economically underprivileged

1. By Act No. 217 of 30 June 1990 ("institution of legal aid, at State cost, for the economically underprivileged"), albeit limited to the criminal sector, an attempt has been made to respond to the long-felt need for a change in the current legislation regarding free legal aid which had hitherto been regulated by Royal Decree No. 3282 of 30 December 1923. The absolute and urgent need for a radical reform was founded on a provision in article 24, third paragraph, of the Constitution which requires that "the economically underprivileged be guaranteed, by special institutions, the means of taking action and defending themselves before any kind of court", a principle which is closely linked to that of substantive equality enshrined in article 3, second paragraph, of the Constitution and which includes the transition from a "fiscal concept" of free legal aid to a "social concept" and imposes a discipline to be implemented by means of criteria appropriate to social assistance.

2. The Act replaces the concept of "poverty" contained in the previous regulations by that of "economic underprivilege", in conformity with the Constitution, and links that condition to an objective criterion, namely, the annual net income. As for its substance,, Act No. 217 provides for funding by the State of the costs, dues and fees of the defending counsel and amounts payable by the accused for expert advice. Moreover, it provides that the legal aid to the economically underprivileged must be applied by securing the services of practising lawyers. Incidentally, the accused is given a wide range of choice in appointing the lawyer to assist him, so as to preserve the element of trust which is basic to every supply of professional services.

Institution of a national citizens' advocate and draft bill

3. The debate on the institution in Italy of a citizens' advocate has developed since the second half of the 1960s, both in the framework of legal doctrine and in political circles. Since then, the institution in question has been adopted at the local level and proposals have been made for its introduction into the national legal system.

4. The institution of the citizens' advocate was first applied in Italy at the regional level and nearly all the regions have not only provided in their statutes for its introduction but also for its practical establishment.

5. The citizens' advocate has also been introduced in several provinces including those of Trento (Pr. A. No. 28 of 20 January 1982, amended by Pr. A. No. 11 of 5 November 1984 and Pr. A. No. 32 of 5 September 1988) and Bolzano (Pr. A. No. 15 of 9 June 1983). Next we should mention its introduction at the communal level by the communes of Piacenza (Del. of 3 March 1983), Parma (Del. of 21 May 1979), Reggio Emilia (Del. of 11 November 1986), Città di Castello (Del. of 1986), Martina Franca (Del. of 25 October 1988), Ravenna (Del. of 1988), Pistoia (Del. of 26 July 1988), Savona (Del. of 13 February 1989) and Leghorn (Del. of 17 February 1989). The list will undoubtedly lengthen in view of the recent approval of Act No. 142 of 8 June 1990 on the organization of local self-government, article 8 of which explicitly provides that provinces and communes may establish the institution of the citizens' advocate "as a guarantor

of the impartiality and effective operation of the communal or provincial public administration".

6. What is more, as regards the operational aspect of the institution at the local level, it may be said in general - even if there are some technical differences between one set of regulations and another - that the citizens' advocate is intended to operate as a mediator between citizens and the local administration, verifying the correctness and rapidity of administrative procedures, exposing unjustified conduct by the administration and, where appropriate, requesting that judicial action be taken.

7. The institution of the citizens' advocate, as provided for by various bills, would bring our country into line with the great majority of European States and also, in that way, implement Assembly Recommendation 757 (1975) of the Council of Europe, confirmed on 23 September 1985 by the Committee of Ministers of the Council of Europe (R(85) 13).

8. As provided for in the bills, the activities of the citizens' advocate would be useful whenever the public authorities have not yet reacted, i.e. when there is no possibility of challenging an action in the courts and the private individual cannot specifically demand that action be taken by a given deadline. This would obviously be a new departure as compared with the traditional ways of controlling administrative actions. In view of the present status of relations between the civil service and the citizens in Italy, this role is likely to be extremely important for the protection of the interests of private individuals, which are often seriously damaged as a result of the excessive confusion of administrative procedures.

9. The delay in establishing the post of national citizens' advocate is due to the numerous legal problems (constitutional and administrative) raised by the institution. For these reasons, some of the proposed bills put forward on the subject for the attention of Parliament envisage the establishment of a number of national citizens' advocates specialized by subject and the extension of the citizens' advocate to all levels of local decentralization (see the proposals in: Il Difensore civico nell'ordinamento italiano e in alcuni paesi europei, published by the Research Service of the Chamber of Deputies, IInd edition, June 1990).

10. The introduction of a national citizens' advocate will raise the problem of coordinating his activities with those of the local citizens' advocates already in existence or to be established. The problem is particularly acute as regards the regional level. In fact, our constitutional regulations provide for a decentralization of activities and functions transferred to the regions which enjoy broad autonomy and are thus freed from any kind of control not provided for by the Constitution.

11. The draft bill of May 1991 gives the citizens' advocate - appointed by the President of the Republic (art. 8) - the task of supervising the proper functioning of the civil service and intervening in the event of abuse, functional deficiencies and delays in certain departments in carrying out their duties, even where administrative actions or conduct are not unlawful (art. 1). The citizens' advocate is to have full freedom of action and independence, intervening ex officio or at the request of private individuals or groups of individuals who consider that they have been injured by an act or omission of the civil service (art. 2) in the event that the response to the application which must be sent to the department concerned has proved unsatisfactory

(art. 3). The citizens' advocate, who is given free access to the documentation existing in the civil service departments (art. 5), having assessed the justification and correctness of form of a citizen's application, indicates to the unit concerned the possible procedures to be followed within the time-frames established. In the event that, when the preset deadline is reached, the unit concerned has not acted on his indications and has not formally rejected them, the citizens' advocate reports the case to the Prime Minister's Office, simultaneously informing the applicant for intervention of his action. Even if the citizens' advocate considers that there is no justification for following up a complaint, he must reply to the complainant giving his reasons therefor (art. 4). In order to ensure the proper functioning of his office, the draft bill provides that the citizens' advocate shall report annually to both Chambers on his activities and that the report in question shall also be published in the Gazzetta Ufficiale della Repubblica (art. 6).

Article 3

(Equality of men and women before the law)

12. Italian legislation specifically centred on women has developed during the 1987-1992 quinquennium following a dual guideline: the adoption of rules in support of motherhood and rules to eliminate the last few residual traces of unequal treatment of the sexes in the workplace.

13. In the first category we have Act No. 546 of 29 December 1987, by which the right to a daily maternity allowance (pregnancy and childbirth periods), already provided by Italian legislation for employed women, was extended to self-employed female workers, agriculturalists, farmers, sharecroppers, artisans and traders.

14. More recently, the category of female workers was entirely reassessed as a result of the approval of Act No. 379 of 11 December 1990, by which the Italian Parliament adopted provisions concerning "maternity allowances for professional women".

15. This Act is intended to defend the right of women exercising a liberal profession, who are members of one of the insurance and assistance schemes for professional persons, to the payment of a maternity allowance for periods covering the two months prior to the estimated date of childbirth and the three months following the actual date of childbirth, to an extent of a sum equal to 80 per cent of five-twelfths of the income received and declared for taxation purposes (art. 1).

16. Women who have adopted, or have custody with a view to the adoption of, a child under six years of age are entitled to the same allowance (art. 3). An allowance equivalent to 80 per cent of one month's income or emoluments is also granted to professional women who have had an abortion, whether spontaneous or therapeutic, before the third month of pregnancy (art. 4).

17. In the second category we find Act No. 400 of 23 August 1988, on the reorganization of the Prime Minister's Office and of governmental activities, whereby a commission was to be set up to deal with "the study and elaboration of the changes needed to adapt legislation to the ends of equality between the sexes and to assist the Prime Minister in coordinating the administrative

departments competent for the implementation of national and local projects having the same ends" (art. 19, paragraph 1, subparagraph (n)).

18. Act No. 64 of 22 June 1990 implemented this provision by regulating the composition and duties of the Commission for the Parity and Equality of Opportunities of Men and Women.

19. A first result of the work of this Commission may be noted, namely, Act No. 125 of 10 April 1991 ("positive actions to achieve man/woman parity in the workplace"), the purpose of which is precisely to achieve substantive equality between men and women, already formally guaranteed by articles 3 and 37 of the Constitution and by Act 903/77, by removing the practical obstacles to the achievement of equality of opportunity in access to work, career prospects, mobility and the distribution of work, including the use of educational counselling and vocational training.

20. Act No. 125 has also the purpose of promoting a balance between family and vocational responsibilities and a better distribution of these responsibilities between the two sexes by means of a varied organization of work and its modal and temporal conditions. To that end, the Act set up in the Ministry of Labour and Social Security the "National Committee for the Respect of the Principles of Equal Treatment of and Opportunities for Male and Female Workers", presided over by the Minister of Labour and Social Security, or by an under-secretary representing him, with a membership of representatives of workers' and employers' organizations and of women's movements, together with the parity counsellor belonging to the Central Employment Commission established by Act 56/1987. Other participants in the Commission's meetings, without voting rights, are legal, economic and sociological experts, representatives of the Ministries of Education, Justice, Foreign Affairs and Industry, Commerce and Handicrafts and of the Civil Service Commission, and officials of the Ministry of Labour.

21. Following the promulgation of the Act, the Minister of Labour published, on 8 and 22 July 1991, two decrees applying it. The first gave some indications to enterprises concerning the preparation of the report on their male and female staff which they are required to make at least every second year, in accordance with article 9 of Act 125/1991. The second fixes the time limits for the submission of projects by enterprises and the methods of distributing contributions among such projects. In connection with these contributions, the Parity Committee has, according to Act No. 125, to express its opinion by a majority and also to consider the projects being executed.

22. In addition, the Committee has the duty of promoting positive actions by public institutions relating to labour policy, assessing the application of parity legislation, preparing codes of conduct to encourage behaviour compatible with parity and exposing indirect discrimination. It may also request that workplaces be inspected for the purpose of gathering information. It intervenes in collective disputes to propose solutions and encourages the employment of women in public organizations concerned with labour and vocational training matters. Furthermore, it makes general proposals, informs and sensitizes public opinion and engages in any other kind of initiative it deems useful to eliminate actual discrimination, even if it is indirect.

23. As well as this Act, intended for employees in general, we may mention another, Act No. 215 of 25 November 1992, designed to promote substantive equality and parity of opportunities for men and women in economic and

entrepreneurial activities. In particular, the Act is intended to encourage the creation and development of female enterprise, including its cooperative form; to promote managerial training and enhance the professional standing of female entrepreneurs; to facilitate access to credit for enterprises with female directors or predominantly female ownership; to encourage the entrepreneurial qualification of women and the management by women of family enterprises; and to promote the presence of enterprises with female directors or predominantly female ownership in the most innovatory portions of the various sectors of production (art. 1).

24. To this end, a national fund has been set up to encourage the development of the female entrepreneurial environment (art. 3) by means of concessional financial assistance in the form of contributions to capital (art. 4), tax credits (art. 5) and financing facilities (art. 8).

25. At the same time, a Female Enterprise Committee was set up in the Ministry of Industry, Commerce and Handicrafts with the duties of orienting and programming in general the interventions provided for by the Act to promote research, studies and training in respect of female enterprise (art. 10). The implementation of the Act in question will be supervised by the submission of an annual report to Parliament, through the competent minister (art. 11).

26. Some important changes to the legal system were made by the Constitutional Court at the time when the constitutional legitimacy of the laws was being checked. By its ruling No. 498 of 27 April 1988, the Court declared illegitimate and thus excluded from the regulations the portion of article 4 of Act 903/77 which subordinated to the demand the right of female workers to provide their services up to the same age limits as specified for men. The Court also declared null and void the ban on night work for women, declaring by its ruling No. 210 of 24 July 1986 the illegitimacy of article 12, paragraph 1, of Act No. 653 of 26 April 1934 and article 1 of Act No. 1305 of 2 August 1952, implementing article 3 of ILO Convention No. 89/1948, inasmuch as they provided for the prohibition of night work by women.

Article 6

(Right to life)

27. There is no capital punishment in the Italian legal system. Consequently, legislation to ensure the right to life is essentially health-oriented. Committees and courts for the rights of the sick have been set up in Italy, as voluntary associations for the defence of primary values. Initiatives have been taken in some regions which culminated in regional acts designed to safeguard the rights of the user of the National Health Service through the inauguration of a special office for the public protection of the rights of the sick as, for instance, in Sicily, Lombardy and Umbria.

Commission for the Protection of the Rights of the Sick

28. Bearing in mind the need for rules for the full protection of health on the basis of the principles established by Act No. 833 (Act Establishing the National Health Service) of 23 December 1978, the Commission for the Protection of the Rights of the Sick submitted to the Minister of Health in 1992 a document concerning the programme which highlights the aims of an immediate legislative

or regulatory intervention concerning the rights of the sick, designed to introduce an internal organization of hospital and dispensary services which, respecting the criteria of uniformity throughout the national territory and in the framework of the powers mentioned in article 5 of the Act Establishing the National Health Service, enables the users to participate in the implementation of the Service; makes the right to health assistance effective, as a subjective and fundamental right of the human being; safeguards the dignity, freedom and privacy of the sick person; guarantees the right to medical information; and provides for simplified forms of protection at the administrative and legal levels in the event of injury to the rights of the users of the National Health Service.

29. In this context, the intervention rules concerning the organization of the officially agreed public and private services will have to regulate, inter alia:

(a) The right of the user to receive health care adequate to his needs and in accordance with the criterion of professional diligence;

(b) The skills and responsibilities of the public health facilities required to implement the right quoted in paragraph (a) above and to guarantee respect for the dignity and freedom of the sick person, with due regard for the requirements of hygiene and personal discretion;

(c) The introduction of adequate means to inform users or members of their families, at the time when a service is requested, regarding the significance of the departments and their internal organization, paying particular attention to information concerning the persons in charge of the various departments and the alternative facilities available and the corresponding waiting times;

(d) The obligation of the medical staff to supply advance information with regard not only to medico-surgical, therapeutic and chemico-biological control treatments but also every other major aspect of the medical programme, at the request of the user, his relatives or his family doctor;

(e) The obligation to deliver promptly a copy of the clinical documentation at the request of lawful applicants; and

(f) The obligation to install suitable facilities and equipment to encourage the social and family relationships of the users.

30. As regards the forms of protection, the intervention rules will have to regulate:

(a) The ability of the user or of a person in whom he has confidence to make a complaint to a committee established in each local health unit and made up of one member appointed by the voluntary associations, one member appointed by the headquarters organizations and a third member appointed by the region;

(b) The specific powers that must be conferred upon the said committee, namely, those of inspection, intervention and of immediate submission of a case to the disciplinary committee mentioned in paragraph (d) below;

(c) The obligation to provide for the existence of the committee mentioned in paragraph (a) above as one of the approved facilities among the conditions laid down for conventions;

(d) A reform of the procedures of the disciplinary committee to provide for the presence, without the right to speak or vote, of a member of the committee mentioned in paragraph (a) above;

(e) Participation, without the right to vote, of a member of the committee mentioned in paragraph (a) above in the discussions of the management committee; and

(f) The members of the committee mentioned in paragraph (a) above shall serve for a two-year term, shall not be capable of re-election and shall be unpaid.

National Bioethics Committee

31. A National Bioethics Committee was established by a decree of 28 March 1990, its members being well-known and respected representatives of the Italian medical and legal worlds. The Committee has sponsored, inter alia, studies on topics related to the protection of human life which were published in 1991 by the Prime Minister's Office. Among these, the ones that are particularly important for the purposes of article 6 of the Covenant are those on bioethics, on the definition and determination of human death and on the care of patients with terminal illnesses. Each of these will be considered below.

Bioethics

32. With respect to biomedicine, clinical medicine and the correct professional exercise of the activities inherent therein, the National Bioethics Committee, having assessed the scope and complexity of the problem of training health personnel, focused its attention on "the requirements of the health institution together with the health needs of the population in general and of the individual persons that are changing according to scientific and technological advances, thus calling for adaptations of the training system accompanied by the corresponding initiatives which take account of the ethical aspects of the training process and of the need to include bioethics in the course of studies for the health professions". The Committee's recommendations, designed both to promote training in bioethics and to guarantee the ethical value, in methodological terms, of the general training of the health professions, are in keeping with the explicit recommendations made by influential supranational and community organizations (including the Council of Europe and the World Health Organization (WHO)) aimed at promoting training which is more responsive to the needs of the individual in the health surroundings.

Definition and determination of human death

33. The research carried out by the Committee on the problem of defining death and determining human death has taken account of the uneasiness long provoked in public opinion by the use of new instrumental technologies and criteria different from the traditional ones for the verification of that occurrence. In its conclusions, the Committee expressed the wish that the legislature should develop in regulatory terms the criteria produced by the evolution of medicine, using instrumental parameters, for the determination of death for all legal purposes; that differentiated normative criteria should be introduced for the determination of death of newborn or very young children; and that the establishment and activities of death-determining committees should be encouraged. In view of the great interest aroused by the problem dealt with

here, we have deemed it useful to annex to this report the Committee's conclusions on the ethico-medical criteria for the determination of death.

Care of patients with terminal illnesses

34. In 1991, the National Bioethics Committee also gave its views on the draft resolution approved by the Environment and Health Commission of the European Parliament, on 30 April 1991, on the care of patients with terminal illnesses. The Committee's observations focused, in particular, on curative therapies and on the problem of therapeutic obduracy. On this point, the Committee took a view opposed to the indication contained in the resolution and did not agree with that part thereof which states that the doctor "must" accept a request by a patient to put an end to his life since it regarded that concept as a legalization of so-called "active euthanasia". In any case, it expressed the hope that "the debate on euthanasia would develop not surreptitiously but in an explicit way, in full respect for all the opinions expressed in that regard but also with all appropriate attention to the moral, deontological and legal problems that it raises and with all the study in depth that is required by a topic so agonizing for the human conscience".

Article 7

(Torture and other inhuman treatment)

35. On 12 January 1989, Italy ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 39/46 of 10 December 1984. On the same date, Italy also lodged a declaration recognizing the competence of the Committee against Torture, established by article 17 of the Convention, to receive communications under article 21 (disputes between States) and article 22 (individual appeals).

36. On 31 July 1991, the Government of Italy submitted its initial report (CAT/C/9/Add.9) on the implementation in Italy of the Convention against Torture. That report was considered by the Committee against Torture on 30 April 1992. Consequently, we would refer to that report if detailed information is required on the application in Italy of United Nations standards in the matter.

37. As in other Western European countries, the Italian legal system does not provide for "torture" as a category of crime expressly covered by the criminal code or by other laws. What is more, even after the ratification of the Convention, it has not been deemed advisable to introduce the concept of "torture" as a crime in the course of the adaptation of the domestic system to the rules of the international instrument. First of all, it must be pointed out that the practice of torture and other cruel, inhuman or degrading treatment or punishment has always, without any exception, been considered to be contrary to the political approach and the government action that have from the very outset characterized democratic Italy. As for the reasons which have led the Italian legislature not to recognize torture as a special offence, they can be summarized as follows.

38. Italy has accepted unreservedly the principle whereby the ban on resort to torture and other cruel, inhuman or degrading treatment or punishment is not only contrary to the principle on which the Italian legal system is based but also to the international community's own principles which are henceforth

regarded as rules of jus cogens. The proof of this is that Italy has ratified not only the United Nations Convention against Torture but also the European Convention on the subject, which is very similar in content to the former. In addition, Italy has ratified the International Covenant on Civil and Political Rights, article 7 of which provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

39. The principle according to which any person deprived of his or her freedom must be treated with humanity and with respect for the dignity inherent in the human being is a principle contained in the Constitution (art. 27) and simultaneously a solemn principle of the international constitutional order. Any conduct which objectively constitutes an action forbidden by the Convention forms the subject of penal provisions; any abuse by the authorities, whether in the form of injuries, private violence, threats or unlawful imprisonment, is an offence for which severe penalties are laid down.

40. The report indicates that there are certain bills designed to introduce the concept of the crime of torture, in legal terms, into the penal system. The reason for these initiatives, however, is the desire, which has its own legal consistency and its raison d'être, to ensure that treatment forbidden by the Convention is not regarded as punishable solely in the presence of the perpetrator of such illicit acts. In general, Italian legislation already adequately covers cases that can be assimilated to the concept of torture in the widest sense of the term. Actually, the fact that torture has not been introduced as an offence into the Italian legal system must definitely not be regarded as a gap in the system in the face of Italy's international obligations but, on the contrary, as a situation designed to render more effective and more immediate the punishment of any persons guilty of treatment not in accordance with the Convention.

41. In recent years, sporadic and isolated incidents of resort to violence by some members of the forces of order have been reported; needless to say, these formed the subject of judicial inquiries and public opinion has always been duly and promptly informed; in some cases, severe sentences were imposed. In addition, administrative steps were taken in respect of guilty or suspected persons. There again, it must be remembered that, in accordance with the principles proper to the state of law underpinning the Italian system, a person is presumed innocent until tried and convicted. Consequently, apart from administrative measures, which can be adopted in respect of persons suspected of having resorted to ill-treatment, their conviction is final only when the judge of last instance has given his verdict.

42. In conclusion, torture is not practised in Italy and the machinery for the protection of the dignity and physical integrity of the individual when these are threatened, starts working as soon as incidents occur that are regarded as being exceptional and, what is more, unlawful and must thus be condemned as such.

43. Lastly, since 1990, Italy has been participating in the United Nations Voluntary Fund for Victims of Torture by making a substantial annual contribution, which has already been pledged for the current year and for 1993.

National Bioethics Committee

44. In 1991, the National Bioethics Committee - to the composition of which we have already alluded (see art. 6 above) - carried out research on some subjects

that are important for the article being considered here. They include the problems of genic therapy, the safety of biotechnologies and the donation of organs for transplant, which are set out below. A few conclusions have been drawn in so far as the studies made should also serve as guides for later legislative action.

Genic therapy

45. The subject of genic therapy, because of its intrinsic novelty and its complexity, has been under consideration by the Committee since it began its work. By defining genic therapy as the introduction into human organisms or cells of a gene - i.e. a fragment of ADN - which has the effect of preventing and/or treating a pathological condition, the Committee has taken into consideration a double possibility of genic therapy: the first aims at correcting genetic defects in the cells of the germinal line with an effect on the descendants (the so-called "germinal genic therapy"); the second is designed to eliminate or reduce molecular defects at the level of the somatic cells with effects that are limited to the individual (the so-called "somatic genic therapy"). The conclusions submitted on the subject of germinal therapy, in accordance with everything that is recognized and established by all the European and international organizations, were to the effect that, as things stand at present, such therapy on human beings cannot be proposed or accepted for a variety of technical, scientific and social reasons which are thus also of a legal and ethical nature. On the other hand, the genic therapy of cells of the somatic line, in appropriate conditions and after having complied with strict requisites, of a legal and ethical as well as technical and scientific nature, is in every way acceptable, being comparable with a substitutive therapy or a transplant but at the molecular level instead of at that of organs, tissues or cells. According to the Committee, any attempt at genic therapy on the somatic line must always be accompanied and preceded by a serious assessment of the possible benefits and risks of such a therapy; by a comparison with the effectiveness of traditional therapies; by respect for the control measures and conditions for the acceptability of somatic genic therapy established by the standards in force and by the accepted usages of the national and international scientific community. In the light of these considerations, the Committee has drawn attention to the fact that the time is ripe for the national and international authorities to update the list of hereditary, congenital or acquired pathological conditions for which somatic genic therapy is indicated; to define guidelines and criteria for the technico-preparative operations characteristic of the sector and for the follow-up monitoring methods; and to collect data on the experiments being carried out.

Safety of biotechnologies

46. The safety debate has accompanied the innovatory biotechnologies and genetic engineering virtually since their inception. The need for a recommendation common to all its member States led the European Economic Community to promulgate, on 23 April 1990, two directives on the topic: 90/219/EEC on the contained use of genetically modified micro-organisms, and 90/220/EEC on the deliberate release into the environment of genetically modified organisms. The National Bioethics Committee took the view that it should discuss the topic of the safety of biotechnologies and of the possible risks to human beings and to the environment associated with those new techniques. In the opinion it issued on the subject, it recognized the need for legislative intervention aimed at scientific and technological development with maximum respect for the environment and the safeguard of public health, along

the lines already indicated by the directives mentioned above. While recognizing the importance of experimenting with biotechnological innovations, the social advisability and utility of which were manifest, it deemed it necessary to guarantee a complete uniformity of criteria for risk assessment and adequate control measures.

Donation of organs for transplant

47. On the subject of the donation of organs for transplants, the National Bioethics Committee took the view that the ethics to be followed should relate solely to post mortem donation and should encourage its diffusion. It was advisable to effect a transition to a legal regime of consent to the removal of organs from a corpse, in which can be found a more balanced recognition of the requirements of the personal decision to donate one's own organs - for an appropriate age range - and the qualified presumption of consent with respect to a person who has remained silent, even in the presence of a rule which prescribes that one must clearly express one's own wishes with regard to acceptance of the removal of organs. At the same time, the Committee expressed the hope that the general public would be increasingly sensitized to the culture of transplants, within the context of the general principles of human solidarity, by means of adequate socio-health initiatives with an explicit commitment on the part of the State to implement them; that the many organizational difficulties that were still clearly responsible for the failure to use potentially disposable organs to the benefit of a human life would be removed; and that any possibility of commercialization of human "transplantology" should be eliminated, by means, inter alia, of more careful supervision and the introduction of appropriate penal legislative instruments.

Article 8

(Slavery, servitude and forced labour)

Prisoners' work

48. As for the obligation of prisoners to work, Presidential Decree No. 248 of 18 May 1989 amended DPR No. 341, of 29 April 1976, in application of Act No. 234 of 26 July 1975 concerning the prison system and the measures for depriving of and limiting freedom. In particular, articles 46 to 49 of the Decree, concerning specifically prisoners' work, were amended and article 49 bis was inserted which provides that prisoners may exercise, at the vocational level, "handicraft, intellectual and artistic activities ... in special premises or, in particular cases, in their cells" (art. 49), permitting them in this way to carry out "work at home within the prison ... even during the hours intended for ordinary work" (art. 49 bis).

49. In its new formulation, article 46 provides for approval by the supervising magistrate of the admission of prisoners and inmates to outside work; moreover, an escort is no longer compulsory for them but it is for the management of the institute to assess whether or not it is advisable. The same article 46 provides for forms of liaison and collaboration between the management of the detention institutes and the provincial labour offices, as established by the Ministry of Justice by agreement with the Ministry of Labour and Social Security, so as to render possible the assignment of prisoners and inmates to outside work by encouraging the offer of adequate work on the part of enterprises that are suitable for cooperating in the prison treatment. The

modalities of these are regulated by Commissions for Employment sitting in the constituencies in accordance with article 19 of Act No. 56 of 28 February 1987. The need was also emphasized of encouraging full occupation of the jobs available within the prisons, by providing that the district inspector will give appropriate instructions to the managements of the prisons within his competence.

50. The new literal formulation of article 47 imposes an interpretation from which it emerges that, in determining the qualities characteristic for assignment to work, account must be taken not only of the time available, the time passed in a state of involuntary vocational inactivity during the detention or imprisonment and the behaviour of the prisoner, but also of other elements that must be established on a case-by-case basis.

51. On the other hand, we should like to mention Decree-Law No. 152, of 13 May 1991 (converted into Act No. 203 of 12 July 1991), by which provisions were made for "emergency measures against organized crime, and the transparency and effectiveness of administrative activities". This same Decree has introduced a few limitations on the assignment of prisoners to outside work, for the concession of reward-leave and measures alternative to detention in respect of persons convicted for offences committed for the purposes of terrorism or the overthrow of the constitutional order, as well as for other serious reasons such as organized crime offences.

52. In addition, Constitutional Court judgement No. 49 of 18 February 1991 is of particular interest. It declared constitutionally unlawful article 23 of Act No. 354 of 26 July 1975 (prison regulations) - abrogated with ex nunc effect by Act 663/86 - to the extent that it established a reduction of three-tenths in the wages paid for prisoners' work.

Institution of the prison police corps

53. Act No. 395 of 15 December 1990 established the prison police corps and provided for the dissolution of the prison wardens corps and the suppression of the role of prison supervisors. The new prison police corps is a civil body placed under the direction of the Ministry of Justice to which apply, as regards the cessation of the employment relationship, the standards applicable to civil service posts.

Article 9

(Right to liberty and security of person)

General outline

54. By Presidential Decree No. 457 of 22 September 1988, the text of the new Code of Criminal Procedure was approved, the provisions of which came into force on 24 October 1989, namely, one year after the publication of the said Decree. In application of the directives contained in Delegate Law (a law promulgated by Parliament to operate a legislative delegation) No. 81 of 16 February 1987 (cf. preceding report), the new rules have introduced major innovations with respect to the guarantees of the criminal trial and the fundamental rights of the accused.

Security measures (in general)

55. Volume I of the new Code of Criminal Procedure contains provisions concerning personal security measures.

56. Chapter I of this Volume gives a series of general provisions, among which may be distinguished those intended to fix the basic limits within which the judge's preventive power must be exercised. Consequently, this chapter contains rules not only for the extent of the indications needed if freedom-limiting measures are to be applied but also for the "security requirements" in the light of which such measures may be applied. This chapter also establishes the basic rules for determining functional and sectoral jurisdictions. Chapters II and III spell out the security measures of a coercive and prohibitory nature respectively, each measure being considered in turn with a description of its basis and methods. Chapter IV deals with the substance and form of provisions regarding de quibus measures, while chapter V is concerned with the "extinction" of the said measures, with reference also to the maximum periods they may remain in force. Chapter VI covers appeals in the matter while chapter VII contains the procedural rules for the provisional application of the security measures provided for by article 206 of the Code of Criminal Procedure. Chapter VIII, the last, deals with compensation for unlawful detention.

The main articles of the new Code of Criminal Procedure: security measures

57. Article 273 of the Code of Criminal Procedure regulates the general conditions for the applicability of these measures in the following provisions:

> "1. No one may be subjected to security measures unless there are serious indications of his or her guilt; and
>
> 2. No measure may be applied if it appears that the deed has been perpetrated in the presence of a justifying or non-punishable cause, or if there is a reason for the extinction of the offence or a reason for the extinction of the punishment which, it is thought, might be inflicted".

58. Significant elements of this article are, in particular, the stress on the concern to reduce the scope of the situations which can legitimately give rise to the adoption of security measures and, in close relationship with directive 59 of the new Delegate Law, the traditional formula focused on the reference to the idea of serious indications of guilt.

59. Article 274 regulates the security requirements in the following way:

> "1. Security measures shall be ordered:
>
> (a) When there are requirements in connection with the investigation, whereby the acquisition or the authenticity of evidence could be seriously endangered;
>
> (b) When the accused has fled or there is a real danger that he might do so, provided that the judge thinks that a penalty exceeding two years' imprisonment could be inflicted upon him; and
>
> (c) When, by reason of the modalities and specific circumstances of the deed and the personality of the accused, there is a real danger that he will commit serious offences by the use of arms or other means of violence

against the person or against the constitutional order, or will commit organized crime offences or offences of the same kind as that for which he is being prosecuted."

60. Article 274 sets forth the rules concerning "security requirements", emphasizing first of all that any procedural determination affecting the freedom of the accused must also be based on a practical appreciation of the periculum in libertate related to parameters fixed by the Act itself.

61. It must first of all be explained that the absoluteness of the formula with which article 274 begins ("security measures shall be ordered ...") does not mean a return to absolutely automatic rules for the behaviour of the judge which, as we shall see, is on the contrary alien to the new system even more so than it had been to the one previously in force; it should, indeed, be noted that the legal discretionary power is, in this area, a legally limited discretionary power in any case, in that the judge is not left any further freedom to determine in one way or another once he is convinced, on the basis of the criteria supplied to him by the law with a view to guiding and limiting his discretionary power, that the conditions for the exercise of the preventive power do or do not exist.

62. The first of the "security requirements" to be taken into account is that which is a renewal of the traditional use of security measures for the purposes of the investigation. In other words, there must be risks in connection with the complete and correct safeguard of the potential evidence that the investigation can supply. In particular, it is intended that the use of security measures for the extortion of confessions, whether directly or not, must be excluded in the most absolute way.

63. As for the flight and danger of flight of the accused, doubts regarding the possible significance of these elements have been overcome, on the basis of the special provisions contained for that purpose in the new Delegate Law. By the use of indications taken from constitutional jurisprudence and, in part, formally taken up by the legislation in force, two - and only two - categories of criminal cases have been singled out, namely, those of serious offences directed against the collective safety or the constitutional order and those of serious offences arising from organized crime. These are deducible from the actual behaviour of the accused, from the specific circumstances of the offence of which he is currently accused and from his personality taken as a whole, which naturally give rise to the "security requirement" in question. In the case of quite another situation, the "protection of the collectivity" must be exercised in the light of the specific and practical danger that offences will be committed linked, by their identical nature, to that for which the person in question has been charged.

64. In the final text of article 274, paragraph (c) has been reformulated with particular attention to the reference that had been made, in the preliminary draft, to a forecast that the accused could be dangerous on the basis of the possibility that he would commit "serious offences of the same kind as those for which he is charged". In this case, the formula employed by the recent Act No. 330 of 1988 (and also by the Delegate Law) has not been reproduced purely and simply with its reference to the "requirements for the protection of the collectivity", since this solution has revealed itself incapable of satisfying the needs for a precise delimitation of the operational zone of the extrajudicial security measures.

65. Article 275 indicates the criteria for selecting measures:

> "1. In ordering the measures, the judge shall take into account the specific adequacy of each of them in connection with the nature and degree of the security requirements to be satisfied in the specific case.
>
> 2. Each measure must be proportionate to the significance of the deed and to the punishment which it is thought could be inflicted.
>
> 3. Pre-trial detention in prison may be ordered only if every other measure appears inadequate (omissis).
>
> 4. Pre-trial detention in prison may not be ordered, unless there are exceptionally important security requirements, if the accused is a pregnant person or a person nursing her own child or is in a state of particularly serious bad health or is over 65 years of age.
>
> 5. Pre-trial detention in prison may not be ordered, unless there are exceptionally important security requirements, if the accused is a drug addict or alcoholic or if he or she is following a therapeutic recovery programme in the framework of an authorized facility, and the interruption of the programme might damage his or her detoxication. By the same measure, or a subsequent one, the judge shall fix the necessary controls to ensure that the drug addict or the alcoholic continues his or her recovery programme".

66. Still on the subject of the relations between provisional detention and the series of other instruments that can have an impact on the freedom of the individual, the fourth paragraph proposes - like the earlier laws - the principle of adequacy with respect to the special requirements of persons in unusual physical or psycho-physical conditions (on the one hand, drug addicts and alcoholics, and on the other, pregnant or nursing women, persons who are seriously ill and persons more than 65 years old).

67. The final draft of the text tries to take into account both the reasons - brought out by the Parliamentary Committee - for adopting provisional detention only in exceptional cases with regard to persons who are in such conditions and the concerns - expressed by various sides - concerning the dangers of instrumentalization deriving from the lack of adequate supervision of the effective evolution of rehabilitation programmes, in the light of which a decision not to apply the above-mentioned measure can be tolerated.

68. It should now be noted that, from the combined provisions of articles 272, 274 and 275, it clearly emerges that any hypothesis, even a limited one, regarding the mandatory nature of provisional detention - or arrest in the traditional terminology - is excluded. For the most serious offences, it is thus the general rules which prevail and that is why, in the context of situations for which it is lawful to exercise preventive power and, in particular, in the context of those for which provisional detention is permitted, it is still within the discretion of the judge - on the basis of indications given by the law - to decide whether or not to adopt the most serious measure among those provided for the exercise of that power.

69. Article 276 deals with the measures that the judge can adopt in the event of violation of the instructions he has given. He has the power:

"1. In the case of a violation of the provisions inherent in a security measure, the judge may decide to replace it by or combine it with another more serious measure, in the light of the importance of the reasons for and circumstances of the violation. Where it is a question of violating the provisions inherent in a prohibitory measure, the judge may decide to replace it by or even to combine it with a coercive measure."

70. The possibility of replacing the original measure by another more serious one, so as to prevent de quibus provisions ending up as dead letters, does not constitute an automatic combination or substitution, since the violation in some circumstances may have features which make a legal reaction of this kind disproportionate.

71. Article 277 regulates the safeguard of the rights of the person subjected to security measures, in the following terms:

"1. The methods of executing the measures must safeguard the rights of the person subjected to them, the exercise of which must not be incompatible with the security requirements in the case in question".

72. Article 278 indicates the criterion for the determination of the penalty for the purposes of applying measures. It states:

"1. For the purposes of the application of measures, the penalty provided by the law for each offence perpetrated or attempted shall be taken into account (omissis)."

Coercive measures

73. When offences are being prosecuted for which the law provides a sentence of life imprisonment or rigorous imprisonment for a maximum term of more than three years, particular coercive measures are provided for by articles 281 to 286. These include, in particular:

A ban on leaving the country (art. 281);

Obligation to present oneself to the judicial police (art. 282); and

Residential bans and obligations (art. 283), namely:

"1. By the measure forbidding residence, the judge instructs the accused not to live in a specific place or not to go there without the authorization of the judge trying the case", or else "he forbids the accused to leave, without the authorization of the judge trying the case, the territory of the commune in which he has his habitual domicile (omissis)."

House arrest (art. 284), namely:

"1. By the house arrest measure, the judge forbids the accused to leave his own home or another private place of residence or else a public place of care or assistance;

2. Where necessary, the judge may impose limits or bans on the ability of the accused to communicate with various persons other than those who live with him or who are assisting him (omissis).

.....

5. The accused person under house arrest is regarded as being in a state of pre-trial detention".

Pre-trial detention in prison (art. 285), namely:

"1. By the measure which imposes pre-trial detention, the judge orders the officers and agents of the judicial police to arrest the accused and take him immediately to a place of custody where he remains at the disposal of the judicial authority;

2. Before his transfer to the place of custody, the person subjected to pre-trial detention may not have any limitation on his freedom, apart from the time and according to the methods strictly necessary for his transfer" (omissis).

Pre-trial detention in the place in which he is under care (art. 286).

Form and execution of the measures

74. Articles 291 to 295 govern, in particular, the aspects of the various provisions that the judge can take into account with respect to security measures. In that connection, article 294 (questioning of a person in pre-trial detention) is of particular interest. It provides:

"1. During the preliminary investigation, if it has not been provided for in the course of the hearing to validate the arrest or the provisional arrest of the suspect, the judge shall carry out the questioning of the person in a state of provisional detention immediately and, in any case, not later than within five days after the beginning of the detention, unless this is absolutely impossible. If the person is under house arrest, the questioning must be carried out at the latest within fifteen days following the imposition of the house arrest" (omissis).

Maximum duration of provisional detention

75. According to article 303 of the new Code, the total duration of pre-trial detention must not exceed a maximum of from three months to six years, according to the type of offence being prosecuted. In particular, pre-trial detention loses its effectiveness if, from the beginning of its application, the fixed terms, which can vary from three months to one year, have elapsed without the measure deciding the trial being taken, or without a judgement having been passed in the abbreviated trial, or a judgement in the case of application for a penalty on the request of the parties. Pre-trial detention also loses its effectiveness if, from the promulgation of the measure which decides the trial or from the beginning of the execution of the detention, the fixed terms have elapsed, which can vary from a minimum of six months to a maximum of one and a half years, without any first-degree verdict having been pronounced. The same article 303 provides that pre-trial detention, for a later term which runs from a minimum of six months to a maximum of one and a half years, likewise loses its effectiveness when a verdict on appeal has not been pronounced. Lastly,

article 303 fixes the overall duration of pre-trial detention providing that it "cannot exceed" the following periods:

(a) Two years, when the offence being charged carries a maximum penalty under the law of a period of rigorous imprisonment not exceeding six years;

(b) Four years, when the offence being charged carries a maximum penalty under the law of not more than 20 years' rigorous imprisonment, except in the case covered in paragraph (a) above; and

(c) Six years, when the offence being charged is one for which the law establishes a maximum penalty of life imprisonment or rigorous imprisonment for a period exceeding 20 years.

76. Article 304 provides for cases of suspension of the periods of the maximum duration of pre-trial detention, which is possible on the one hand in cases in which the accused or his defender are unable to act or at their request, or else in particularly complex legal discussions or in the event of certain types of offences. Nevertheless, article 304 provides: "In any case, the duration of provisional detention may not exceed two-thirds of the maximum time penalty provided for the alleged offence or retained in the verdict."

Appeal

77. The accused can appeal against the orders establishing a coercive measure, according to article 309 of the Code of Criminal Procedure.

Compensation for unlawful detention

78. Articles 314 and 315 regulate, respectively, the prerequisites for and methods of obtaining compensation for unlawful detention and the procedure laid down for that purpose. In particular, article 314 provides:

> "1. Any person who has been acquitted by an irrevocable verdict, because nothing proves the existence of the deed, because he or she has not committed an offence, because the deed does not constitute an offence or is not provided for by the law as an offence, shall be entitled to fair compensation for the pre-trial detention undergone, in the event that he or she has not caused it or helped to cause it by fraud or by a serious fault.
>
> 2. The same right shall belong to the person acquitted for whatever reason or the person convicted who, in the course of the trial, was subjected to pre-trial detention when, by an irrevocable decision, it appears certain that the provision which established the measure was approved or maintained without the conditions for applicability provided for in articles 273 and 280 being fulfilled.
>
> 3. The provisions of paragraphs 1 and 2 shall apply, on the same conditions, in favour of persons whose cases have been permanently filed or dismissed.
>
> 4. The right to compensation is excluded for the proportion of provisional detention which is applied for the purposes of determining the extent of a penalty or for the period in which the consecutive limitations

on the application of the detention have also been supported by another charge.

5. When, by the verdict or by the decision to file, it has been affirmed that the deed is not covered by the law as an offence as a result of the abrogation of the incriminatory rule, the right to compensation is also excluded for that portion of the pre-trial detention supported before the said abrogation".

79. Article 315 provides:

"1. The application for compensation must be made, under pain of inadmissibility, within 18 months following the day on which the verdict of acquittal or conviction became irrevocable, the dismissal became final or the decision to file the case was taken.

2. In any case, the amount of the compensation may not exceed one hundred million lire.

3. To the extent that they are compatible, the rules concerning compensation for judicial error shall be applied".

Information concerning the nature of and reasons for the charge

80. In the case of the application of a security measure, the provisions required by the said measure include the communication of the charge. However, if this is not so, the new Code of Criminal Procedure has provided as a formal act of notification of the charge, where appropriate, the so-called "guarantee information" (article 369 of the Code of Criminal Procedure). This institution was formulated as a result of a consideration of the fact that the former "legal communication", instead of fulfilling the guarantee functions for which it had been devised, had often gravely harmed the reputation of suspects charged with offences concerning which no serious evidence subsequently emerged. An attempt was made in this way to "remedy that serious disadvantage by adopting a solution which, while substantially and practically retaining the function of guaranteeing the exercise of the accused's right of defence, even during the phase of the preliminary investigation, does not inflict on persons who may never be brought to trial, damage - including damage to image and human costs - which are peculiar to criminal proceedings" (report on the final text of the new Code of Criminal Procedure).

81. The so-called "guarantee information" is no longer given at the beginning of the investigation "but, in keeping with its institutional function, on the accomplishment of the first act at which the defending counsel has the right to be present. It is, in fact, at that moment only that the requirement arises to inform the accused of the prosecutory procedures started against him since it is only in the light of the accomplishment of the aforesaid acts that the activities of the defending counsel can become externalized" (report quoted above). The information must contain the list of the legal rules that have been violated as well as the date and place of the alleged action.

82. The requirement to give information concerning the charge is satisfied even in the case when, although the aforesaid "information" has not been notified, the government procurator intends to question the person being investigated, since the invitation to appear must also contain "a summary

account of the deed as it results from the investigation carried out to date" (article 375 of the Code of Criminal Procedure).

83. Nevertheless, the said "information" being possible only, because the government procurator may (during the investigation) deem it advisable not to carry out any action at which the defending counsel is entitled to be present, the investigation will have no repercussion on the status of the person who is subjected thereto, in view of the obligation to maintain secrecy which ends once the accused is informed or has the right to be informed of the investigation and in view of the lack of accusation or description as the accused or suspect regarding the charge for which he is being investigated. This is so to the extent that the preliminary investigation, which is not to be confused with the pre-trial investigation phase of the earlier system, "is exclusively represented by the need to approve the notitia criminis in order to include it in a precise imputation and to select a type of request to propose to the competent judge" (report quoted above).

Solidarity fund for the victims of attempts at extortion

84. In order to give some practical support to the activities of entrepreneurs and tradesmen who are victims of attempts at extortion (and thus to strengthen their capacity to resist these attempts by criminal organizations), Decree-Law No. 419 (Conversion Law No. 172 of 18 February 1992: "Support fund for victims of attempts at extortion") has provided for economic support to producers, traders and professional persons who, as a result of their refusal to agree to extortion, have suffered harm in their goods or property designed to weaken and overcome resistance to the extortionist. The contribution is intended for the replacement or restoration of the destroyed or damaged goods and is granted to the beneficiary on the basis of the simple documented existence of material damage to things, to the exclusion of any other economic harm suffered, including personal harm, which is incidentally taken into account in the same relationship of contributing to the repair of harm by the recent provisions of Act No. 302 of 20 October 1990, containing various measures in favour of the victims of terrorism and organized crime.

85. Financial aid can be granted, within the framework of an articulated procedure, in the event of acts carried out, not necessarily in association, to obtain an unlawful profit. The civil "resistance" behaviour of the victim is also, as has already been mentioned, a necessary prerequisite for the granting of the assistance. The fact of failing to accept attempts at extortion is assimilated to the express refusal which forms the basis of the damage caused by extortion or to break the victim's resistance.

Civil liability of judges

86. By Act No. 117 of 13 April 1988 ("Compensation for damage caused during the exercise of judicial functions and the civil liability of judges"), the topic has been organically recast in both its substantial and procedural aspects. In the preceding system, the application (except in the case of civil liability arising from an infraction) for the declaration of the judge's liability could not be made without the permission of the Ministry of Justice, the competence to take note of the decision being attributed to a judge appointed by the Court of Cassation; the assumptions of liability were limited to cases of fraud, deceit or peculation, or the refusal or omission to carry out, or unjustified delay in carrying out, an administrative action.

87. Act No. 117 is based on the central idea that the liability action, limited to specific hypotheses, can be brought not against the judge but against the State after an ineffective resort to the correctional machinery offered by the system, whereas the judge is answerable within the framework of an action for damages following an autonomous judgement. The judge responds directly before the civil court only when the damage has been caused by an action constituting an infraction committed during the exercise of his duties. The action for liability may be brought for harm derived from an action by the judge in the exercise of his duties that constitutes fraud or a serious fault or a denial of justice. The Act retains, of course, the previous provisions concerning the redress of legal errors.

Article 10

(Treatment of accused and convicted persons)

88. Following the entry into force of Act No. 663 of 10 October 1986 ("amendments to the act on the legal system of the prisons and on the implementation of measures of deprivation and restriction of freedom"), which was mentioned in the previous report, Presidential Decree No. 248 of 18 May 1989 subsequently amended and consolidated also Decree No. 431 of 29 April regulating the application of Act No. 354 of 26 July 1975 on prison organization for the purpose of adapting it to the profound innovations in that organization resulting from the 1986 reform. Of particular interest are the provisions concerning the application of legal isolation, prisoners' work (internal or external), participation in one's own religious rites, reward-leave, the trial regime, house arrest, the semi-release regime and conditional release.

Article 12

(Admission of aliens)

Entry and stay of aliens

89. Act No. 943 of 30 December 1986, which was examined in the preceding report, facilitated in the first place the obligation of clandestine immigrants from outside the Community to regularize their presence in the national territory. The Act was ignored by a number of people, concerned that the declaration of their identity would also remove the work opportunities which had hitherto been offered to them.

90. In the light of that situation, it thus appeared necessary to pass Act No. 39 of 29 February 1990, taking up Decree-Law No. 416 of 30 December 1989, by which were introduced "emergency regulations concerning political asylum, the entry and residence of persons from outside the Community and the regularization of the status of persons from outside the Community and stateless persons already present in the territory of the State".

91. In order to ensure that that Act would be circulated as widely as possible among the foreigners present in Italian territory, the Office of the Prime Minister published and disseminated free of charge an information booklet (Vademecum), in five languages (Italian, English, French, Spanish and Arabic) explaining Act No. 39 in clear and easily accessible language, with particular emphasis on situations concerning access to the Italian frontier, entry visas,

residence permits, inclusion in the civil register, study courses, work, health care, vaccination, the acquisition of Italian nationality and expulsion. It also includes a list of the headquarters of foreign communities, associations, protective organizations and assistance organizations which persons from outside the Community can approach to safeguard their rights in Italy. The aforesaid booklet has been supplemented by another publication, also by the Prime Minister's Office, containing a systematic resumé of Act No. 939 translated into eight languages, including Portuguese, Polish and Filipino, together with a facsimile of a model application for residence by foreigners from outside the Community.

92. Act No. 39 is designed to meet the objective of removing the precarious status of immigrants who, having entered Italy after the deadlines fixed by Act No. 943/86 and by the successive extension acts, have been excluded from all legal regulations and all institutions; in addition, it is a first attempt at putting into place an immigration policy by developing programmed entry flows and conditions for the residence of persons from outside the Community.

93. This same Act No. 39 establishes, in addition, rules for the application for political asylum, and the entry and residence of persons from outside the Community. The right to enter Italy is granted for reasons of studies, tourism, employed or self-employed work, assistance to members of the family, family reunion or religion. There are difficulties in obtaining residence permits because of the high number of foreigners already present in Italy for work or studies: the first permit has a maximum duration of two years. In the case of seasonal work, it may have a duration of less than two years. If a residence permit is granted for studies, for work or for family motives, it can also be used for reasons different from those for which it had been initially requested. The first residence permit is normally for two years and it can be extended for four years. To obtain an extension, it must be demonstrated that the person concerned has a minimum wage coming from a dependent or self-employed job. A person who has no regular contract can sign a self-certificate in which he declares his own income and the name of the enterprises and private persons for which he has been clandestinely working. The residence permit will also be renewed but it can be revoked if the labour inspection office discovers that the statements made are false. A person who is unable to produce a self-certificate does not obtain the residence permit but he cannot be expelled. The persons who can be expelled are foreign citizens who are clandestine, convicted or prosecuted. Persons who are notified of expulsion must leave Italy within the following fortnight. If they do not do so, they are escorted to the frontier as soon as they are found or emerge from later controls.

94. Foreigners who have residence permits may establish or belong to cooperatives. If they are employed, they are entitled to a labour contract and they must report defaulting employers. Artisans, tradesmen and itinerant workers may carry out their activities by registering in the tables of professional orders and registers and obtaining regular licenses within the limits provided for by the commune to which they belong. Itinerant workers with a regular license can employ up to five employees from outside the Community.

Legislation for the protection of immigrants

95. In recent years, the extent of the migration phenomenon has brought the topic of protecting immigrants to the forefront. In Italy, immigrants are mainly adults, who correspond to about two per cent of the population, while the foreign presence in the schools (about 20,000 pupils in 1989) seems to be less

than two per thousand of the school population. These data will soon be updated as a result of a re-evaluation in connection with the school year 1991/92.

96. As a result, there are now more than 100 different ethnic groups present in Italy and this gives rise to a phenomenon of pluriculturalism and plurilingualism, as against the biculturalism and bilingualism of the historic minorities in the frontier territories. Although there are some concentrations in certain areas and towns, the situation is basically one of the dispersion of immigrants and foreign pupils throughout the territory: in the latter case, 70 per cent of them consist of just one pupil per class.

97. Act No. 947 of 30 December 1986 guarantees to workers from outside the Community that are legally resident in Italy, and to their families, rights connected with the maintenance of their cultural identity and in the school (art. 1); it entrusts to the regions the task of promoting special Italian language and culture courses so as to encourage the integration into the Italian community of such workers and their families and to promote, together with the assistance of other local organizations, cultural programmes for the various national groups. Lastly it provides that, similar to the provisions for the children of workers from within the Community and the children of returned Italian emigrants in Italy, specific education shall be given in the language and culture of origin.

98. As for foreign schoolchildren, the Italian school system excludes special classes for foreigners only and imposes the standard of inserting pupils a few at a time into a class. This, indeed, corresponds to the factual situation. While the special class corresponds to a model of "separation" between the immigrant and the host society, the system adopted corresponds to a model of "constructive cohabitation". It means giving priority to integration into the framework of the host culture but also takes into account to an adequate extent the use of the language and culture of origin according to the dual method of intercultural teaching in the school context and specific collateral courses. According to the ministerial recommendations, in each school class and at each study level, historical, geographical and cultural aspects and elements relating to the countries of origin of the foreigners present are illustrated as having a significance of "recognition" for the foreigners and arousing the interest of their Italian comrades.

99. As regards the establishment of special courses using the languages and culture of origin of pupils from outside the Community, there are a number of difficulties connecting with the fact that they belong to more than 100 different ethnic groups and are dispersed across the territory. Moreover, in the case of these children, it is not always possible to rely on the cooperation of the diplomatic representatives of the countries of origin, as provided for by the regulations concerning the Community pupils. In the schools with a concentrated presence of pupils from outside the Community, assistance is currently being given by the local administrations with, as far as possible, the agreement of the communities to which they belong.

100. As regards the teaching of Italian as a second language, problems have been encountered with regard to time and additional resources. In schools with a concentrated presence of foreign pupils and, to the extent of the availability of staff, "support" teachers are used, with the resort to residual additional hours for special teaching activities being the most common solution. In all cases, individualized teaching and the use of so-called "open classes" (breakdown and recomposition of classes according to the specific requirements

of the pupils, at different stages in the school day) have proved of great utility.

101. A basic requirement (and it is requested in all the ministerial circulars) is an open and cordial reception of the immigrant which helps him or her to learn the language in his or her relationships with the Italian pupils of the same age and enables him or her to show his or her own cultural specialities and to feel appreciated.

102. For gypsy and nomad children, the ministerial guidelines appear to be in keeping with the indications given for the children from outside the Community in particular. In addition, some derogations from the registration regime are authorized, because of the frequent possible displacements over the territory, and the maximum communication between the schools concerned is required so that the schools of arrival are made aware of the extent of the studies already carried out so that these can constitute the starting point for continued teaching activities.

Article 13

(Expulsion of aliens)

103. Article 7 of Act No. 39 of 28 February 1990 (as updated by Decree-Law No. 193 of 29 February 1992) lays down the cases of expulsion. The decision to expel is made by the prefect, giving his reasons, and carried out in the form of a summons to leave the territory of the State within the following fortnight. In exceptional cases, when public order or security require, the Minister of the Interior can decide, by a decree giving his reasons, on immediate expulsion and immediate escort to the frontier. In addition, this article provides that the expelled alien will be returned to the State of origin. In the event that there are valid reasons to consider that the alien in question may face threats to his safety or freedom in such a State, the expulsion must take place towards another State. In no case may an alien be expelled to a State in which he will be the subject of persecution.

104. There is an appeal from expulsion measures to the territorially competent Regional Administrative Court. Within the fortnight following the prefectoral decree, the person concerned may request that its execution be suspended and this takes effect from the date of the application.

105. For the protection of the alien, it is also provided that the authorities competent to issue decisions concerning entry, resident and expulsion must communicate to or notify an individual of any action which concerns him, together with an indication of what appeal methods are available. The communication must be made in a language known to him or, if that is not possible, in French, English and Spanish.

Facilities to assist aliens

106. Act No. 943/86 had provided, in order to guarantee the applicability of the rules it contained, the institution of new facilities capable of responding to the requirements for the information and assistance of foreign workers. In accordance with these provisions, the "service for the problems of extra-Community immigrant workers and their families" was set up, by ministerial decree of 26 September 1989, in the Ministry of Labour - General Employment

Directorate. This service encourages interventions or actions at various operational levels, from information concerning the equality of treatment of immigrants to a listing of employment offers, problems of insertion in the new social fabric, vocational training, housing, protection of the language and culture of origin, assistance and social security. The service also provides for the carrying out of the regularization procedures provided for by Act 39/90 and the monthly recording of data on the evolution of regularizations in the labour offices. As a contribution to work opportunities and in keeping with its own institutional duties - as covered by article 3 of Act 943/86 - the service has prepared, with the consent of the General Cooperation Directorate, a Vademecum for the use of persons who are not citizens of the Community on the structure of society and access to cooperative organizations, which will be made available to the labour offices and to the associations and organizations dealing with the problems of workers from outside the Community.

107. The ministerial decree of 4 July 1989 also established the "Council for the problems of extra-Community workers and their families", to carry out programming, intervention, propulsion, support and orientation activities for the effective protection of the rights of the immigrants. The Council is made up of representatives of the persons not citizens of the Community and of the various trade-union organizations, the ministries concerned, the local authorities and associations engaged in the area of assistance to immigrants. In order to ensure effective coordination at the national level of the activities of the various public organs active in matters of immigration, the Council has been divided into five standing sub-committees, coordinated by an Executive Committee presided over by the Minister of Labour and Social Security, which are designed to remove obstacles preventing the effective exercise of the rights recognized to aliens legally present in Italy. The Council's secretariat is carried out by the service for the problems of extra-Community workers mentioned above; in this context, the service endeavours to harmonize the initiatives undertaken locally by the peripheral organs of the Ministry of Labour with the general programmatic intervention guidelines at the national level, on the basis of the Minister's political directives and the views of the Council. The Council meets several times a year in plenary session or in the various sub-committees and deals with emergency problems and situations.

108. By ministerial decrees of 11 April 1989 and 26 September 1989, a "IV zone" was established within the structure of the provincial labour offices reserved for information and promotional services for migrant workers, in an endeavour to assimilate promptly the requirements of the moment and to act accordingly in the overall context of the active policy for the use of appropriate initiatives in favour of those workers. These activities have taken the practical form, on the one hand, of assistance and guidance to the workers concerned with regard to work opportunities and, on the other, of the availability of a facility capable of giving answers about both existing rules and the implications of legislative measures.

109. Some immediate and specific instructions were given on the subject of the recent Albanian question and the problem of distributing more than 20,000 refugees among the various Italian provinces to the Directorate General of Employment, the regional labour offices and the labour inspectorates so that their organizations could act as quickly as possible to legalize the Albanian workers, requesting their registration in the labour office lists, the issue of work permits and their possible participation in vocational training courses. For humanitarian reasons, the measures in favour of the Albanian immigrants have been of an exceptional nature.

Article 14

(Due process)

110. The new Code of Criminal Procedure, which is profoundly innovatory as compared with the previous code and legislation on the subject, came into force on 24 October 1989. After approval by the Cabinet, which had prepared its text by means of Delegate Law No. 81 of 16 February 1987, the Code was published. Our previous report had already illustrated the principles which had inspired the Delegate Law and we shall now list some of the basic concepts on which the new criminal procedure is founded.

111. The accusatory procedure option, contained in the Delegate Law and adopted by the Government in preparing the Code, is justified not only by a traditional idea in greater harmony with democratic patterns and which takes the individual more fully into account but also by the awareness that this option, more than any other, combines guarantees and effectiveness, both of which were sacrificed in the system previously in force, described as "inquisitorial guaranteeism" after the reforms that had taken place from 1955 onwards.

112. In the new Code, the pre-trial proceedings have disappeared: the trial is preceded by a preliminary investigation, carried out by the government procurator's office, which is designed to identify the "determinations inherent in the exercise of criminal action". The findings of the preliminary investigation do not usually constitute evidence, in view of the involvement of the government procurator's office, which no longer has any powers in matters of personal freedom, apart from that of ordering "police custody" which is provisional in nature and presupposes the existence of an emergency need to take action.

113. The trial begins by the definitive formulation of the charge, to which the quality of accused is attached. The charge and the accused which, as is expressly established (art. 60), arise only at the end of the preliminary investigation with the application by the government procurator's office for a committal for trial, an immediate judicial decision or a criminal conviction decree, with the issue of a summons to appear before the justice of the peace and likewise with the application, by agreement between the parties, for the implementation of the penalty and with the documentation of the decision in summary procedure. The person regarding whom the preliminary investigation has been carried out is thus not an accused; he or she may not and must not feel, as a result of the investigation, the negative effects of such a description as long as he or she is entitled to all the guarantees attached thereto.

114. Central to the new Code is the hearing, the place in which the charge is required to go beyond the presumption of non-guiltiness and in which the evidence emerges through the adversary procedural discussion between the parties and the cross-examination. It is to the presumption of non-guiltiness that the disappearance of the benefit of the doubt can logically be attached, with the formula stating that "the judge shall pronounce the verdict of acquittal if there is inadequate or contradictory evidence that the deed exists and that the accused has perpetrated it as a responsible person".

115. There are a number of simplified rituals, some of which have already proved their worth while others are partly or completely new, such as the application of the penalty at the request of the parties and summary judgement. These two rituals, which presuppose an agreement between the accused and the

government procurator's office, tend to simplify the proceedings in first instance and to limit appeals; they were introduced on the assumption that, in the new system, they will be widely used and will help in the swift resolution of most cases.

116. Among the innovations introduced into the Italian procedural system for the protection of the rights of individuals in criminal cases, are the provisions to guarantee the right to a specific, adequate and effective defence, the right to the assistance without charge of an interpreter and the formulation of provisions in the matter of contumacy and where the accused cannot be found. These are considered below. The legal context within which the aforesaid provisions can be found is the text of article 24 of the Constitution, in which is set forth the basic principle in the matter of guarantees of due process by which "every individual shall have the possibility of acting in the courts to protect his own rights and legitimate interests".

Right to practical, adequate and effective defence

117. The rules concerning the defence counsel have been simplified, as compared with those in the previous Code, and at the same time enriched by reason of the requirements of the new "party" trial, its dynamic and the corresponding new contents of the defence function.

118. First of all, the right to appoint the defence counsel (not more than two), as a result of the extension of the accused person's rights, does not come solely within the competence of such a person but also within that of the suspect, the person with regard to whom a security measure has been ordered and, lastly, of the person concerning whom the preliminary investigation has been carried out. This occurs when the so-called "guarantee" actions have to be carried out, i.e. those which the defence counsel has the right to attend and regarding which he has the right to be informed. The person concerning whom the investigation is being carried out or who has good reasons to think that he or she is the object thereof, even if he or she has not received the "guarantee information", has an interest in making formal a definitive attendance in the presence of the prosecuting authorities, even if this is only to exercise the faculty of submitting documents or memoranda.

119. A characteristic innovation is the possibility for the spouse of a person arrested or in provisional detention to appoint a confidential defence couunsel (art. 96, paragraph 3).

120. In the absence of the appointment of a confidential defence counsel, the rule concerning assigned legal assistance takes its place with criteria that guarantee the "effective character" of the this type of defence and with rapid and flexible systems, capable of excluding arbitrary selections, particularly on the part of persons placed in opposition to the person who needs the said assistance.

121. The criteria for the appointment of an assigned defence counsel are established by the Council of Bar Association, in agreement with the President of the Court from lists of names and periods of availability (art. 97). The Council of the Bar Association is, in addition, responsible for disciplinary action in the case of abandonment of the defence or refusal to act as assigned defence counsel.

122. On the other hand, the same article 97 establishes that "the assigned defence counsel has the obligation to give his services and cannot be replaced except for a justified reason" and he ceases his functions if a confidential defence counsel is appointed. The defence counsel enjoys all the powers and rights assigned to the accused (unless the law expressly reserves them to the latter). In addition, the defence counsel cannot be in disagreement with the will of the accused and, consequently, in the event of a conflict between them, it is the will of the second which prevails and may render an action of the defence counsel null and void, provided that this is done by an express written statement before the judge has issued any order concerning the said action. Provision is also made for the possibility, in the event he is unable to act, for the defence counsel to appoint a substitute to exercise his rights and carry out his duties.

123. The accused has the right to confer with his defence counsel and to consult him from the beginning of the execution of the security measure or immediately after the arrest or the police detention and, consequently, even before being questioned by the judge.

124. As regards the "non-acceptance, renunciation or dismissal of the defence counsel", article 107 provides that these have an effect only from the moment in which they are communicated to the prosecuting authorities and until the defending party is assisted by a new appointed or assigned defence counsel. In such cases, the "new defence counsel of the accused or the person appointed as substitute shall, at his request, be given a suitable period, in principle not less than three days, to become familiar with the proceedings and to obtain information concerning the facts subject of the prosecution" (art. 108).

125. An enhancement of the right to defence will be noted in the change of the pattern of the hearing, designed to achieve an adversarial discussion to produce the evidence (at the key moment of its gradual formation) and not on the basis of the evidence (recorded in the documentation of the pre-trial proceedings). Defence counsel and both parties have thus been given access to the records for the hearing and to the confidential matters; the submission of the lists of witnesses or expert advisors; the insertion in the record of any statement which is of any significance and, in the course of the hearing, a statement of the facts which it is intended to prove and the request for inclusion in evidence. In addition, the accused has a right of access to the evidence against him (the government procurator has the same right) and the examination of witnesses, experts and technical advisors is the direct responsibility of the parties. All this goes to show that the opposed parties of the government procurator and the accused have equality of status.

126. Previously, the accused person who had not appointed a defence counsel for the trial before the Court of Cassation was deprived of information concerning the appeal decision, since the notices were due solely to the assigned defence counsel. Consequently, when the public hearing was being fixed for the consideration of the appeal, neither an accused who had personally drafted the reasons nor one regarding whom the government procurator had proposed the appeal was notified. On the other hand, the new Code of Criminal Procedure establishes, in article 613, that, in the event that there has been no appointment for the cassation hearing "the defence counsel is the one who assisted the party during the last trial" provided that he is recorded in the special table of the Bar and that, in the event that the accused is assisted by an assigned counsel, the notifications must be communicated to the accused and not solely to his counsel.

127. Among the possible reasons for an appeal has now been included "the lack of acceptance of decisive evidence, when the party has so requested under article 495, 2nd paragraph". This provision enshrines the right of the accused "to the admission of evidence for the defence concerning matters that are the object of evidence for the prosecution". In the previous system, the failure to admit a piece of evidence did not, in itself, constitute a violation of the procedural law and could be deduced as a reason for appeal only when it had given rise to a defect of motivation, generally recognized according to the most authoritative jurisprudence, in the indisputable statements or in a deformation of the facts. The new Code, on the other hand, gives pride of place to the debate between the parties as guaranteeing a correct formation of the judge's conclusions.

Right to the assistance free of charge of an interpreter

128. Article 143, first paragraph, of the new Code of Criminal Procedure guarantees to an accused who does not know the Italian language the right to enjoy free of charge the services of an interpreter so that he may understand the charges made against him and follow the various stages of the trial in which he participates.

129. In the aforesaid provision, it should be noted that the word "accused" is used instead of the word "alien" so as to bring within the scope of application of the rule any person (whatever his nationality) who does not know the Italian language and who is thus unable to understand the charge and to follow the proceedings in which he participates.

Contumacy

130. Account was taken in preparing the new Code of Criminal Procedure of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as of the recommendations contained in resolution No. 11 adopted in 1975 by the Committee of Ministers of the Council of Europe. The latter, dealing precisely with the question of contumacy, lays down nine minimum rules, assuring in this way that a trial without the presence of the accused is considered to be admissible, provided that it is hedged about by numerous guarantees. In particular, the said resolution recalls, inter alia, the rules of summons in good time; deferment in the case of failure by the accused to appear which is not the result of his having absconded from justice; requirement that the accused be notified of the consequences of his failure to appear; postponement of the hearing in the event that this is requested for legitimate reasons; the presence of the defence counsel; the usual procedures of the hearings; notification of the verdict; any appeal against the latter; and a retrial in the event of an absence that was not justified but was subsequently attested by the accused as being beyond his control. These rules can be regarded as completely satisfied by the provisions introduced by the new Code on the subject dealt with here.

Criminal trials of minors

131. It should also be mentioned that Act No. 123 of 5 February 1992, which promulgated the new rules of article 27, covers, in the case of criminal trials of minors, a decision of dismissal of proceedings on the grounds of the insignificance of the action. Generally speaking, the new texts give pride of place to the element of rehabilitating rather than punishing the accused minor.

132. In this connection, Act No. 123 provides that if, during the preliminary investigation, it emerges that the action is flimsy and the behaviour occasional, the government procurator shall ask the judge to dismiss the charges on the grounds of the insignificance of the action if the further continuation of procedure would harm the educational requirements of the minor (art. 1, para. 1).

Reform of the Code of Civil Procedure

133. Act No. 353 of 26 November 1991, "on urgent measures for civil trials", has introduced the reform of the civil proceedings, the underlying principles of which have already been set forth in the preceding report; the entry into force of the Act - already fixed by article 92 at 1 January 1992 - was subsequently deferred until 1 January 1993 (art. 50, Act No. 374 of 21 November 1991 - "Institution of the justice of the peace"), in order to coordinate it with the introduction of the justice of the peace.

134. The reform, designed mainly to reduce the time of proceedings and thus to give the citizen presenting his claims a more rapid decision, has amended the earlier system at the points in which there were spaces that could be exploited for purposes of delay by parties that were not interested in a rapid decision on the substance. In this connection, we may mention:

The radical simplification of the rules for determining incompetence, even if it is ex officio, limited to the first bargaining hearing (art. 4 of the Act);

Abolition of the automatic suspensive effect of the preventive jurisdiction regulation (art. 61);

The introduction of a series of, fairly flexible, estoppels which oblige the parties to set forth their defences in accordance with a measured system from the introductory documents to the closure of the preparatory phase (art. 9, para. 5, and art. 17, last paragraph);

The institutionalization, on the model of labour proceedings, of the personal appearance of the parties for free questioning for the purpose of facilitating reconciliation and to improve the build-up of the judge's findings;

Normal hearings by a single judge of first instance, other than in exceptional cases where the retention of collegiality is regarded as essential (art. 88);

Abolition of the debate hearing (art. 23-25) with the proviso that one can be held at the request of a party;

Introduction of provisional ex lege execution of the decision in first instance; and

Reform of the appeal process.

Article 17

(Right to privacy)

Interception of communications and conversations

135. Articles 266 to 271 of the new Code of Criminal Procedure govern the limits of admissibility of interceptions of communications and conversations.

136. Article 266 provides:

> "1. Interception of conversations and telephonic communications and other forms of telecommunication is permitted in procedures relating to the following offences:
>
> (a) Deliberate offences for which there is provided a penalty of life imprisonment or rigorous imprisonment for a period exceeding a maximum of 5 years determined under article 4;
>
> (b) Offences against the public administration for which a penalty is provided of rigorous imprisonment for a maximum period not less than 5 years, determined under article 4;
>
> (c) Offences involving narcotic or psychotropic substances;
>
> (d) Offences concerning arms and explosives;
>
> (e) Smuggling offences; and
>
> (f) Offences involving insults, threats, harassment or annoyance of persons by means of the telephone.
>
> 2. In the same cases, the interception of communications among presents is permitted" (omissis).

137. Interception is qualified as an action proper to the government procurator; it is thus for the latter to decide whether it should be done, to define the methods and to use the results. The judge, on the other hand, has the task of supervising and guaranteeing: he is reserved the power of authorizing the action, i.e. validating it, in the special case where for reasons of emergency he has not been able to intervene in advance.

138. Consequentl[illegible], article 267 provides:

> "1. The government procurator shall request the judge responsible for the preliminary investigation to grant his authorization for the operations provided for in article 266. The authorization shall be given by a decree, stating the reasons, when there are serious indications of an offence and interception is absolutely essential for the purposes of continuing the investigation.
>
> 2. In emergency cases, when there is good reason to think that delay may result in serious harm to the investigation, the government procurator shall order the interception by a decree, giving his reasons, which must be communicated immediately and, in any case, within not more than 24 hours, to the judge indicated in the first paragraph. Within 48 hours

of the order being issued, the judge shall decide to validate it by a decree, giving his reasons. If the government procurator's decree is not validated within the time-limit, the interception may not be continued and its results cannot be used.

3. The government procurator's decree ordering the interception shall indicate the means and duration of the operations. This duration may not exceed fifteen days but can be extended by the judge by a decree, giving his reasons, by successive periods of a fortnight each, if the conditions indicated in the first paragraph continue.

4. The government procurator's office shall carry out the operations itself or through an officer of the judicial police.

5. In a special reserved register, kept in the government procurator's office, there shall be noted in chronological order the decrees which order, authorize, validate or extend interceptions and, in the case of each interception, the beginning and end of operations".

139. However, article 13 of Decree-Law No. 152 of 13 May 1991, in the text approved by Conversion Act No. 203 of the 2 July 1991, as a partial amendment of the rule contained in the Code of Criminal Procedure, provides:

"1. By derogation from what is established by article 267 of the Code of Criminal Procedure, the authorization to decide operations provided for by article 266 of the said Code shall be given, by a decree with reasons stated, when the interception is needed for an investigation concerning an offence of organized crime or a telephonic threat where there is sufficient indication.

2. In the cases covered in the first paragraph, the duration of operations may not exceed forty days, but it can be extended by the judge, by a decree giving his reasons, for successive periods of twenty days in the event that the conditions required as indicated in the first paragraph persist. In emergency cases, the government procurator shall arrange directly for extension and, in that case, the provisions of article 267, paragraph 2, of the Code of Criminal Procedure shall be followed.

3. In the cases covered in the first paragraph, the government procurator's office and the officer of the judicial police can be assisted by members of the judicial police".

140. Article 268 contains provisions regarding the execution of interception operations, while article 270 establishes the principle that the results of interceptions may not normally be used in other proceedings. Article 271 is of particular interest and provides:

"1. The results of interceptions may not be used in cases in which they have been carried out other than in the cases provided for by the law or where the provisions of articles 267 and 268, first and third paragraphs, have not been respected."

141. In addition, article 271 forbids the use of interceptions on persons to which the principle of professional secrecy applies (ministers of religion, lawyers, experts, notaries, doctors and persons exercising a health profession) "when they relate to facts known by reasons of their ministries, offices or

professions, unless the same persons have made a deposition concerning the same facts or have revealed them in another way". Lastly, article 271, last paragraph, provides for the destruction of evidence collected in violation of the provisions of the law.

Article 18

(Freedom of thought, conscience and religion)

Religious freedom

142. Italian Government activities designed to apply in practice the principle of religious freedom contained in article 18 and proclaimed in the Constitution (art. 3, 7 and 8, 18-20), have intensified in recent years in numerous sectors.

143. As regards the period from 1987 to date, we shall recall the acts that have been promulgated and which are intended to give practical application to the constitutional principles concerning religious freedom, with the indications of some specific initiatives.

Standard acts and measures

Act No. 517 of 22 November 1988, ratifying the agreement between the Italian State and the religious denomination "Assembly of God in Italy".

Act No. 516 of 22 November 1988, ratifying the agreement between the Italian State and the religious denomination "Seventh Day Adventists".

Act No. 101 of 8 March 1989, ratifying the agreement between the Italian State and the "Union of Italian Israelite Communities".

As for specific problems concerning freedom of religion, we wish to point out the following:

Weekly rest

144. Article 18 of Act No. 516 of 1988 approving the agreement with the Union of Adventist Churches and article 4 of Act No. 101 of 1989, approving the agreement with the Israelite Communities, provide for the civil recognition of the feast of Saturday. Under these regulations, the Adventists and Jews have the right to enjoy, on request, their weekly rest day on Saturday. In addition, article 5 of Act No. 101 of 1982 extends the rules provided for Saturday to the main Jewish festivals, adding to the calendar, fixed by decree of the Ministry of the Interior, at the indication of the Union of Israelite Communities, seven other feast-days.

Religious care for prisoners

145. Article 8 of Act No. 663 of 10 October 1986 affirms the right of prisoners and inmates, who so request, to receive religious care from ministers of their own denominations and to celebrate the rites thereof; this care is ensured on the basis of a list of ministers entitled to access, drawn up by prior agreement between the denomination concerned and the Minister of the Interior.

Religious instruction in public schools

146. With the entry into force of the agreement of 18 February 1984 between Italy and the Holy See, the earlier system which made the teaching of the Catholic religion in the public schools obligatory, apart from the possibility of dispensation for non-Catholics and non-believers, has been abolished and replaced by a machinery more in keeping with the constitutional lay principles of the State.

147. The new system makes it possible for parents and pupils, in the schools of the second cycle of secondary education, to state whether or not they wish to take advantage of religious education. Nevertheless, the option, inserted in a rigidly-regulated school system such as that of Italy, has given rise to an intense debate which even concerned the Constitutional Court. The discrimination arising from the option may show itself practically in terms of the criteria for the formation of classes, the duration of the school day and the position of religious education in the timetable.

148. By its decisions No. 203 of 12 April 1989 and 13 of 11 June 1991, the Constitutional Court stated that those who do not wish to take advantage of the teaching of the Catholic religion are not obliged to attend alternative school activities. Nevertheless, the decision by the Constitutional Court does not remove the organizational problems concerning both the timetable for teaching religion and the so-called alternative subjects, i.e. how the school is to behave towards pupils who do not follow the religious education course.

149. Lastly, we submit a few points which have repercussions for the application of article 18 of the International Covenant on Social and Political Rights:

Abolition of the oath for witnesses in criminal trials (article 497 of the new Code of Criminal Procedure).

The oath has been replaced by a solemn affirmation which entails the legal and moral liability of the witness, without any reference to godhead, which is discriminatory for the non-believer.

Conscientious objection for religious reasons

Conscientious objection to military service for religious reasons is regulated by Act No. 772 of 15 December 1975. The substitute civilian service was assimilated to military service by article 2 of Act No. 958 of 24 December 1986.

The conscientious objection of health staff in matters of abortion is contained in article 9 of Act No. 194 of 22 May 1978.

Issue of identity cards

The view has been adopted, at the administrative level, that the obligation to be photographed bare-headed for the purposes of the issue of the identity card can be waived for religious reasons.

Religion in the kindergartens

150. A significant step in the guidelines for the kindergarten requests - quite apart from any specific education - "the development of a correct attitude with regard to religious belief and religions and the options of the non-believers which is above all essential in terms of reciprocity, fraternity, constructive application, a spirit of peace and the feeling of the unity of the human kind,

at a time when growing pressures are arising from multi-cultural and even multi-denominational interaction. This situation makes it particularly important to intervene to prevent distortions (such as the adoption of discriminatory behaviour) which can arise in the absence of a balanced educational approach".

Article 19

(Freedom of information)

151. In view of the basic principle contained in article 21 of the Constitution, which guarantees to every person the right freely to manifest his own ideas through words, writing or any other means of diffusion, and provides that the press may not be subject to authorization or censure, laws have been promulgated with regard to publishing enterprises and assistance to publication (Act No. 67 of 25 February 1987) and the broadcasting of radio and television programmes (Act No. 233 of 6 August 1990), which form the subject of our attention below.

Legislation with regard to publishing enterprises

152. Act No. 67 of 25 February 1987 - amending Act No. 416 of 5 August 1981 - is designed to guarantee the highest degree of transparency in the transfer of the ownership of newspapers. In particular, it contains effective criteria to measure concentration in the daily press and positions of control of the publishing market (art. 3, paragraph 1), by establishing that acts of cession, contracts for the renting or management of newspapers and the transfer inter vivos of investments, shares or other holdings in publishing companies are null and void if, as a result, one individual achieves a dominant position (art. 3, paragraph 3).

153. In the event that, by the effect of actions different from those mentioned above, or by the effect of the transfer inter vivos of investments, shares and other holdings in companies other than publishing companies, one individual achieves a dominant position, Act No. 67 entrusts to the guarantor for the application of Act No. 416 mentioned above the task of informing Parliament and establishing a deadline, between 6 and 12 months, during which that position must be eliminated (art. 3, paragraph 5). In the event of a failure to comply on the part of the individuals concerned, the guarantor requests the competent legal authority to adopt the necessary measures to eliminate the situation of dominant position, including cancellation of the actions in question and the enforced sale of investments, shares or other holdings or of newspapers, while immediately informing the internal trade-union representation of the publishing enterprise (art. 3, paragraph 6). Lastly, the same Act provides that contributions shall be made to daily newspapers (art. 8). These contributions are increased for daily newspapers published in French, Ladin, Slovene and German in the autonomous regions in which linguistic minorities are present (art. 8, paragraph 7). Further contributions are guaranteed to other newspapers (art. 10) and to informational radio enterprises (art. 11).

Regulation of radio and television programmes

154. Act No. 233 of 8 August 1990 introduced into the domestic legal system a set of rules governing the broadcasting of radio and television programmes, the pre-eminent general interest of which is recognized (art. 1, para. 1). In this way, the legislature has endeavoured to establish pluralism, objectivity,

exhaustive nature and impartiality of information, an opening to various opinions and to political, social, cultural and religious trends, in respect for the freedom and rights guaranteed by the Constitution. These are the basic principles of the system proper to radio and television which involves both public and private individuals acting in competition (art. 1, para. 2). In this connection, the Act provides for the planning of frequency bands that can be used by the various telecommunication services, specifying for this purpose the preparation of a national distribution and assignation plan, to be approved by the President of the Republic and updated every five years (art. 3).

155. In addition, Act No. 233 also establishes the guarantor for radio and publication, appointed by the President of the Republic, who is responsible inter alia for keeping the national register of radio and television enterprises, examining the balance sheets of the private and public concessionaires and supervising radio and television activities throughout the national territory (art. 6).

Article 20

(Prohibition of propaganda for war and of incitement to hatred, hostility or violence)

156. The prohibition of propaganda for war and of incitement to hatred, hostility or violence in the Italian schools takes the form of positive action to promote the values of peace and solidarity and to form a culture of tolerance and dialogue. Within this context, the teaching system and the school curricula develop the motives of education "for peace", "for development", "for international cooperation" and "for democratic co-existence". These motives may be summed up in the expression "intercultural education", as an educational response to the problems of a multicultural society, characterized by the presence of ethnic and linguistic minorities, the inflow of new immigrants and also by regional and local peculiarities. All in all, intercultural education encourages awareness, dynamic confrontation and co-existence of the various cultures and the persons embodying them, in a perspective of solidarity and peace.

157. The Ministry of Public Education, in harmony also with the guidelines of the EEC and the Council of Europe, has drawn the attention of the schools to the subject of inter-cultural education by means of indicative and guiding circulars (particularly ministerial circular No. 205 of 1990), of conferences (particularly the National Study Seminar at Punta Ala, held on 5-7 December 1991) and the teachers' refresher courses. During the week of 27 April to 2 May 1992, devoted expressly to "intercultural dialogue", schools at all levels and of all kinds organized in this connection meetings, debates and cultural and artistic demonstrations. On 23 April 1992, the National Public Education Council published a lengthy and structured statement on the subject of intercultural education, which is the most up-to-date reference text for the Italian schools.

158. The school curricula contain indications, of an intercultural nature, which have had a major significance in developing the most recent texts (the Secondary School Curriculum, 1979; the Elementary School Curriculum, 1985 and Teaching Guidelines for Kindergartens, 1991). The civic education courses provide for specific moments for becoming aware of and considering the subject of human rights and the declarations containing them.

Article 22

(Freedom of association)

Right to strike in essential public services

159. Act No. 146 of 12 June 1990 has introduced rules concerning the exercise of the right to strike in essential public services and on the safeguard of the rights of persons protected by the Constitution.

160. For the purpose of assessing measures to ensure moderation in the exercise of the right to strike, together with the enjoyment of the basic rights of the human person, a "Commission to Guarantee the Application of the Law" has been established.

Freedom of association (police forces)

161. Act No. 121 of 1 April 1981, "on the new regulation of public security", demilitarized the personnel of the State police and, in its article 82, gave them the right to belong to trade unions.

162. Meetings may be held, even in uniform, outside service hours whether on premises belonging to the administration or in places open to the public. In the case of meetings held in public places, participation in uniform is not permitted. In addition, ten hours per year are accorded for meetings during working hours.

163. Article 83 of the said Act prescribes, in particular, that: "trade unions of the staff of the State Police shall be established, directed and represented by individuals belonging to the State Police who are on active service and shall defend their interests without interfering in the management of departments or in operative tasks". The most important function for the police trade union is the, stipulated, collective negotiation by trade-union agreements between a delegation made up of the Minister of the Public Administration, as chairman, the Minister of the Interior and the Minister of the Treasury, or under-secretaries deputed by them, and a delegation made up of representatives of the police trade unions with the greatest membership at the national level. The matters forming the subject of trade-union agreements are wages, working hours, holidays, leave, time off, availability, overtime, missions and transfers, and the principles regarding professional training and retraining.

164. Between now and 1 January 1993, the Government will adopt a legislative decree to unify the regulations concerning working arrangements for the staff of all the police forces and those of the armed forces.

Article 23

(Protection of the family)

165. We wish to point out that the most recent jurisprudence, after opinion No. 404 of 7 April 1988 of the Constitutional Court, applies the principle whereby, in the event of cessation of cohabitation for any reason whatsoever, there is a succession in the tenancy contract, taken out by the tenant leaving the common dwelling, in favour of the person who had been living there with him when there are natural children.

166. We should also mention here the Italian legal thinking which, in recent years, has several times affirmed the principle whereby a working father can apply for and obtain optional stoppage of work after the birth of a child, where the spouse has a vocational activity of a subordinate nature.

Article 24

(Protection of the child)

International conventions

167. Act No. 176 of 27 May 1991 authorized the ratification of the Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989. Within this context, we have the well-known article 3 of the Convention which provides that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

168. Act No. 312 of 19 July 1988 authorized ratification of the agreement with the United Nations Children's Fund (UNICEF), signed in New York on 23 September 1986, for the establishment of an International Child Development Centre at Florence.

Protection of the child

169. In the previous report we highlighted some new standards on the subject of minors, which have appreciably modified their circumstances in the labour market, as well as the new legislation on adoption which provides in particular for a complex apparatus to protect the minor who has been abandoned. In recent years, the Constitutional Court has intervened several times on this subject, adjusting existing legislation by means of declarations of the partial unconstitutionality of certain provisions. The post-1987 production of rules on the protection of children and minors has taken the form of various provisions in various areas. We wish to highlight the following elements:

Protection of a minor in the administrative procedure following his or her discovery in possession of drugs in quantities not exceeding a daily average dose

170. Presidential Decree No. 309 of 9 October 1990 ("single text for the laws concerning narcotics and psychotropic substances and the prevention, care and rehabilitation of the corresponding states of addiction") has introduced (art. 75) special conditions for minor addicts not subject to criminal penalties by providing that:

> "(a) If administrative sanctions against them do not appear usefully applicable, the Prefect shall define the procedure by inviting the person concerned to give up the use of drugs, warning him or her of the consequences of not doing so;
>
> (b) The Prefect shall, if this is feasible and advisable, invite the members of the minor's family to meet him, notify them of the circumstances of the case and give them information concerning the

therapeutic and re-educational facilities available in the province and how to make use of them."

Actions on behalf of minors at risk of involvement in criminal activities

171. The main important initiative of this kind was the promulgation of Act No. 216 of 19 July 1991 ("primary interventions on behalf of persons at risk of involvement in criminal activities"), designed to prevent situations of juvenile maladjustment and to rehabilitate minors already involved in cases of a criminal nature. To this end, it provides inter alia as measures for the prevention of delinquency: subsidies to communities receiving minors who require to be temporarily removed from the family environment; interventions to assist families, even after the reintegration of the minor when the risk situation has been eliminated, particularly to ensure the fulfilment of educational obligations; meeting and social initiative centres in urban districts where risks are high; and facilities in school buildings outside the times of institutional activities and during the summer (art. 1).

172. It should be mentioned that the placing of minors outside their families can be ordered only by the Juvenile Court, under articles 330, 333 and 336 of the Civil Code, on the prior recommendation of social workers, local administrations, schools and police authorities.

173. Act No. 216 thus strengthens the provision of Act 977/67, which has already been made known, that expressly refers to respect for the educational obligations of minors permitted to work. Quite apart from these regulations, the public authorities have made noteworthy attempts to generalize the application of the existing laws.

Protection of handicapped children

174. Over the years, a whole series of laws have been enacted for the protection of persons with physical infirmities. We may mention, pro memoria:

Act No. 66/2 on Economic Assistance to the Blind

Act No. 482/68 on Mandatory Placement

Act No. 381/70 on Economic Assistance to the Deaf and Dumb

Act No. 118/71 on Disabled Civilians: Economic, Health and Prosthetic Assistance; Integration in Schools

Act No. 517/77 on Methods of Integrating Handicapped Persons

Presidential Decree No. 384/78 on the Elimination of Architectural Barriers

Act No. 180/78 on Psychiatric Reform

Act No. 833/78 on Health Reform

Act No. 18/80 on Companions' Allowances

Act No. 41/86 on the Elimination of Barriers in Public Buildings

Act No. 13/89 on the Elimination of Barriers in Private Buildings

Act No. 15/91 on the Right to Vote

Even at the regional level, there are various standards in favour of the disabled. Henceforth all the regions will have laws regarding handicapped persons.

175. The protection of handicapped children is appropriately supported by Act No. 102 of 5 February 1992, "Framework Law for social assistance and the rights of handicapped persons", which was intended not only to prevent and eliminate occasions of disablement but also to encourage the full participation of disabled persons in society by adequate measures to assist them and to enhance as far as possible their personal self-reliance and the exercise of their civil rights.

176. This Act provides, inter alia, for ongoing preventive actions to be undertaken by a variety of public assistance institutions to defend the child from birth onwards; the institution of a personal health card in which are recorded the results of the scheduled medical examinations and all other health information that may be useful in establishing the child's state of health; early rehabilitation; the right to education in the various stages of the kindergarten and in the common classes of the schools; and educational integration, including the use of special school examinations for handicapped children.

177. The text, having first set forth the principles and purposes of the new regulations, defines as a "handicapped person" anyone who has a "physical, mental or sensory infirmity, whether stabilized or progressive, which causes difficulty in learning, relationships or vocational integration and is likely to produce a process of social disadvantage or marginalization" (art. 3).

178. Action on behalf of very seriously handicapped persons is regarded as a priority. There are various forms of action: prevention, care, rehabilitation and assistance. Article 6, which deals with prevention, stresses the importance of health education and information on the causes of the handicap, prenatal and early diagnosis, postnatal and childhood prevention, and hazards in domestic circles and the workplace. Vaccination against German measles is specified. The emphasis is thus laid on the need for action to prevent or limit the appearance of situations causing disablement. In addition, the framework of the civil rights of handicapped citizens is defined: assistance, educational integration, workplace integration, vocational training, mobility, recreation, access to information and communication (art. 7).

179. We should also mention the publication and circulation, by the Prime Minister's Office, of two information handbooks on handicaps, setting out the contents of the Framework Law on the handicapped in a manner readily accessible to the general public.

180. With respect to economic help, reference should be made to Act No. 289 of 11 October 1990, which re-established monthly allowances for attendance at dispensaries (regularly or occasionally), schools (of all kinds and levels) and training or vocational training centres for minor disabled civilians having recognized and persistent difficulties in carrying out the tasks and functions appropriate to their age. Allowances of this kind had previously been abolished

as a result of the abrogation, by article 6 of Act No. 508 of 21 November 1988, of article 17 of Act No. 118 of 30 March 1971.

Authorities having specific duties with respect to children

181. Prime Ministerial Decree No. 444 of 13 December 1991 contains regulations concerning the functions and organization of the Department of Social Affairs (established by Prime Ministerial Decree No. 109 of 13 February 1990). It provides that the said Department shall be responsible for tasks concerning:

(a) Studies on and proposals for reform of the social services, with particular attention to problems affecting the family;

(b) Information, studies and initiatives with respect to the problems of children and young people, coordinating also the activities of public administrations and organizations and relationships in the sector; and

(c) Implementing Act No. 216 of 19 July 1991, as regards the functions attributed to the Prime Minister's Office.

182. Mention should also be made of the establishment of the Central Juvenile Justice Office (Act No. 213 of 29 February 1992) in the Ministry of Justice, to exercise that Ministry's functions in respect of minors.

Protection of minors in the radio and television system

183. Among the most recent regulations for the protection of minors are those of Act No. 223 of 6 August 1990 ("governing the public and private system of radio and television") concerning specific limits on advertising, which "must not cause moral or physical harm to minors" and which may not in any case be inserted in cartoon programmes. Advertising may be specially banned by the guarantor for broadcasting and publishing in the case of interruption not only of programmes of an educational or religious nature but also of works of major artistic value. There is a specific prohibition of the broadcasting of programmes "which may harm the mental or moral development of children" and those containing scenes of gratuitous and pornographic violence and which incite to attitudes of intolerance based on differences of race, sex, religion or nationality or contain films forbidden to persons under 18 years of age, as well as programmes which have already been refused permission for public projection or representation and films forbidden to persons under 14 years of age, between the hours of 7 a.m. and 10.30 p.m.

Working minors

184. We should mention the inspections of workplaces carried out by units of the Ministry of Labour in order to acquire data on the employment of minors and on the scope of so-called "black work", with a view, in particular, to coordinating initiatives on the subject. However, the inspection activities have revealed that violations of the rules protecting workers in these categories are numerically insignificant, whether it be a matter of respect for legal and contractual rules, conditions of work or social security contributions.

185. To give an idea of the phenomenon, some of the inspectors prepared some estimates. It thus emerged that, in the southern region of Apulia, the number of minors employed in the age group of 15 to 18 was about 60,000, while those

under 15 years of age would be about 4,000 in number, including both children employed illegally and minors between 14 and 15 years of age regularly employed in light non-industrial work or engaged as apprentices and in possession of the licenza providing for compulsory school attendance.

186. Another significant element is the number of apprenticeship permits coming within the purview of the provincial labour inspection offices. In 1989, 122,851 permits were issued, distributed as follows: northern Italy, 78,285; central Italy, 23,875; and southern Italy, 20,691. The production sectors generally most interested in work by minors are those of ready-made clothing, knitwear, footwear, engineering and building sites, with a more marked presence in handicraft enterprises, which need a larger labour force because their work is seldom automated. Employment of minors is also widespread in small retailers and public establishments.

Article 26

(Equality without discrimination)

187. The principle of equality and non-discrimination has been examined in detail in this report in connection with various articles of the Covenant, particularly articles 12, 13 and 14.

188. In addition, the problem has been dealt with in its entirety in the seventh periodic report of Italy on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/182/Add.2). The report was considered by the Committee on the Elimination of Racial Discrimination at its thirty-eighth meeting (see A/45/18, paras. 286-298).

Article 27

(Protection of minorities)

Constitutional protection of minorities

189. In our country, respect for the clauses on the protection of minorities is solidly anchored in a specific provision of the Constitution. After the standards contained in article 2 on the "inviolable rights of the human being" and in article 3 on "the equal social dignity" and on "the equality before the law" of all citizens "without distinction as to sex, race, language, religion, political opinions or personal or social conditions", article 6 states: "The Republic shall ensure the protection of linguistic minorities by means of special rules".

190. By this reference to rules, the Constitution intended to guarantee that the linguistic minorities in the Italian population would not be absorbed by the majority. In addition, it wished to ensure that rules were adopted in regard to them providing special treatment and, in any case, treatment different from that provided for the inhabitants in general, because of the diversity of their histories, languages and cultures, which would serve to re-establish the conditions needed for parity.

191. In the context of the constitutional provisions for the protection of minorities, emphasis should be place on the role attributed to the "system of autonomies". In this respect, in view of the fact that the regulations are imbued with an institutional pluralism operating at several levels, it should be mentioned that the highest of these levels, after the State, is that of the regions, which article 115 of the Constitution defines as "autonomous organizations having their own powers and functions".

192. Next comes article 116 which allocates to Sicily, Sardinia, Trentino-Alto Adige, Friuli-Venezia Giulia and Valle d'Aosta "particular forms and conditions of autonomy in accordance with special statutes adopted by constitutional legislation". The regulations thus provide for the regions two distinctive categories: those with special autonomy and those with normal autonomy. The reason for that differentiation resides precisely in the recognized need to grant the five regions in question more extensive legislative and administrative management opportunities in closer keeping with the specific features distinguishing those regions.

193. In this context, the recognized minorities can profit, where there are not greater advantages, from the European Charter for Regional or Minority Languages, once it has been approved by the Committee of Ministers and ratified by the subscribing States, and from the provisions contained in the bill on "rules for the protection of linguistic minorities", which will reorganize everything in the form of domestic regulations once it has been resubmitted to Parliament, since it received only the placet of the Chamber of Deputies at the tenth legislative session.

Legislation for the protection of linguistic minorities

194. In Italy, the recognized minorities are of three different types:

The first is that of communities situated in the frontier areas which, because of historic events, enshrine linguistic and cultural traditions they have in common with those of the populations of the neighbouring countries (the so-called "multilinguals"). These are the French-speaking minority in the Valle d'Aosta, the German and Ladin speakers in Trentino-Alto Adige and the Slovene-speaking minority in Friuli-Venezia Giulia.

The second consists of population groups which have long been installed in various parts of the country and which are highly heterogeneous in nature (the so-called long-established groups, and minorities without territorial connections such as nomads).

This third and last consists of situations where there is a coincidence between the safeguarding of specific characteristics and the entire population of given regions - Friuli and Sardinia.

195. As regards the linguistic minorities of the first group, there is important legislation characterized by differentiated forms of protection connected with the territory in which they are located. In the cases of the Valle d'Aosta and Alto Adige, the minority is protected by rules contained in special autonomy statutes, at the constitutional level, and in the rules applying such statutes. In these regions, the French and German languages are recognized as having equal status with the Italian language.

196. The protection of the French minority in the Valle d'Aosta is not characterized in terms of Italian and French linguistic groups, inasmuch as every citizen of the region is bilingual or "absolutely bilingual", i.e. he or she uses one or other of the languages while understanding the other perfectly. This result has been achieve through teaching in the schools, which provides for courses in both languages for an equal number of hours. In public life, the use of the two languages is perfectly ensured by rules established by both the State and the region. In public administrative offices and in the courts, citizens can address the officials of those institutions in whichever language they prefer.

197. In the Alto Adige, the protection of minorities originates not only from the Constitution but also, historically speaking, from the Paris Agreement of 1946 between Italy and Austria which provides, within a framework of legislative and administrative autonomy, that the German language must be protected in the territory inhabited by German-speaking populations. In this region, unlike the Valle d'Aosta, the form of linguistic protection employed has been to distinguish three linguistic groups in the territory: Italian-speaking, German-speaking and Ladin-speaking. These groups coexist on a foundation of legislation basically designed to ensure a permanent balance among them, by providing in the school system for the existence of Italian-language and German-language schools and for teaching in Ladin in the kindergartens of the areas inhabited by that minority; by fixing in the public employment sector a reserve of jobs for each of the three linguistic groups in proportion to its numbers, as resulting from the last general census of the population in which each citizen was free to declare to which group he belonged.

198. Lastly, there is a third set of rules which govern, in an executive way, the use of the German language in the relationships of citizens with public administrative offices and, in particular, with legal offices. Cross-frontier cooperation is very active and takes the practical form, inter alia, of contacts and understandings through working committees. In the Friuli-Venezia Giulia region, protection of the Slovene language dates back to the historic events of the Second World War, with the signature of the special status for Trieste, annexed to the London Memorandum of 1954, and has been secured by specific legislation (particularly the Osimo Agreement) which relates to the educational and cultural sectors. This protection is also operative for the province of Gorizia. The Government has prepared a special organic bill to protect the Slovene language in the said educational and cultural sectors.

199. In addition to these minorities, there are also throughout the territory of Italy, in a dispersed form, 11 other long-established minority populations such as the Albanians, Catalans, Germans (Walser in the Valle d'Aosta), Greeks, Slavs, Gypsies, Ladins, Franco-provençals, Occitanians, Friulans, and Sards (the last two minorities coincide, as stated above, with the entire populations of their respective regions). Although, for the moment, these minorities have no specific linguistic protection from the legislative point of view, the regions provide for their cultural activities by applying the indicative rules contained in their respective statutes. It is probable that, during the present legislative session, the bill mentioned above on the protection of linguistic minorities will be relaunched on its parliamentary journey. The rules it contains are similar to those of the "European Charter for Regional or Minority Languages" which, as has already been stated, has yet to be approved by the Committee of Ministers. With these measures, most of which have been applied and some of which are being defined, the Italian State considers that it can ensure adequate protection of minorities and development of their identities.

Annex

CONCLUSIONS OF THE NATIONAL BIOETHICS COMMITTEE ON THE DETERMINATION OF DEATH

1. The concept of death is defined as the total and irreversible loss of the organism's capacity to maintain autonomously its own functional unity.

2. Death may be determined by the help of anatomical, clinical, biological, cardiac and neurological criteria. As regards the anatomical, clinical, biological and cardiac criteria, the Committee refers to the generally accepted or codified criteria and regards as valid all the contents of the Police Mortuary Regulations, as recently amended (ministerial decree of 19 September 1990).

3. As for the neurological criteria, the Committee deems acceptable only that referring to the so-called "cerebral death", understood as meaning irreparable, organic, cerebral damage, having attained an acute stage of development, which has provoked an irreversible state of coma, in which artificial support has intervened in time to prevent or treat the anoxic cardiac arrest.

4. It cannot accept the criterion referring to "cortical death", which is verified while the palaeoencephalic centres remain intact and the central regulatory capacity of the homeostatic and vegetative functions, including self-reliant respiration, remains active.

5. It cannot accept either the criterion referring to the death of the encephalic trunk, since it does not indicate of itself that the structures above the trunk have lost the possibility of functioning if they were stimulated otherwise.

6. Attentive application of the clinical criteria which, in the presence of an organic cerebral lesion, demonstrated by means of instrumental diagnosis, gives rise to the suspicion of cerebral death, must be accompanied by a search, on the part of the reanimator, for all the factors that can supply the certainty that cerebral death has occurred.

7. The observation time now prescribed (12 hours) may be reduced by the use of certain instrumental examinations which make it possible to confirm the diagnosis of cerebral death obtained by taking an EEG plate and to contradict it easily in cases of exogenous intoxications or evoked somato-sensory potentials (electrical signals stimulated by special mechanisms to see if the nerves and the nervous centres, particularly the cranial ones, react), i.e. which demonstrate the absence of cerebral circulation (cerebral angiography, Doppler continuous-wave flow measurement, Doppler intracranial flow measurement, cerebral scintigraphy and computerized isolated photon-emission tomography-SPECT).

8. Determination of death in very early childhood presents such special problems that, to overcome them, it was deemed appropriate to accept the criteria set forth by the "Task Force for the Determination of Brain Death in Children", which provide for a longer observation period.

9. The determination of the death of the full-term newborn child requires the combined application of all the criteria indicated by the Task Force; in the case of a prematurely born child, especially if it is of a gestational age of

less than 32 weeks, the Committee recommends, in addition to the criteria indicated by the Task Force, an adequately long observation period and the maximum prudence in assessing the instrumental parameters now available.